( )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No.

CENTRAL NEW ENGLAND RAILWAY COMPANY, PETITIONER,

vs.

BOSTON & ALBANY RAILROAD COMPANY, ASSIGNOR FOR THE BENEFIT OF NEW YORK CENTRAL RAILROAD COMPANY, ASSIGNEE

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT FOR THE COUNTY OF SUFFOLK, STATE OF MASSACHUSETTS

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J60018

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 6, 1928

ORDER NO. 945 M&O

FORM A 9 — Jan-6-17.

DEPT NO. 3243

DATE Dec. 31, 1917

PLEASE REMIT TO TREASURER, GRAND CENTRAL TERMINAL, NEW YORK, NEW YORK. CHECKS SHOULD BE MADE PAYABLE TO THE ORDER OF THE BOSTON AND ALBANY R. R. (N. Y. C. R. R. CO., LESSEE). IF FURTHER INFORMATION IS REQUIRED, RETURN THIS BILL TO THE AUDITOR, SOUTH STATION, BOSTON, MASS.

IN REMITTING PLEASE QUOTE

ACCT'S DEPT. NO. 3072

MONTH OF

951

TO

BOSTON & ALBANY RAILROAD

N. Y. C. R. R. CO., LESSEE

Central New England Railway Company

DR.

DATE OF SERVICE	NATURE	AMOUNT	TOTAL
191	For joint facilities at Springfield from October 1, to December 31, 1917, at $15,000.00 per annum,		$3,750 00
	Op. Exp. 279 750. " " 413-U 187.50 Inc. Acc. 508 2812.50		

UNCOLLECTED BILL
RENTS

APPROVED

General Superintendent

EXAMINED AND REGISTERED

ENTERED FOR COLLECTION DEC 21 1917 AUDITOR

191

RECEIVED PAYMENT Three thousand seven hundred fifty - - - - - DOLLARS

TREASURER

1

FORM A 8

bm-4-17.

PLEASE REMIT TO TREASURER, GRAND CENTRAL TERMINAL, NEW YORK, NEW YORK. CHECKS SHOULD BE MADE PAYABLE TO THE ORDER OF THE BOSTON AND ALBANY R. R. (N. Y. C. R. R. CO., LESSEE). IF FURTHER INFORMATION IS REQUIRED, RETURN THIS BILL TO THE AUDITOR, SOUTH STATION, BOSTON, MASS.

DEPT. NO. 555

DATE Dec. 10, 1917

IN REMITTING PLEASE QUOTE
ACCT'S DEPT. NO. 8154
MONTH OF Nov 1917

TO
BOSTON & ALBANY RAILROAD
N. Y. C. R. R. CO., LESSEE

Central New England Railway Co.,
Hartford, Conn.

DR.

DATE OF SERVICE	NATURE	AMOUNT	TOTAL
191	For services of towermen at Agawam Junction in November, 1917		
	3 men 30 days @ $2.66	$239.40	
	Labor carrying water	7.52	
		$246.92	
	Supervision, Acct. etc. 10%	.75	
		$247.67	
	APPROVED [signature] General Superintendent		$247.67

EXAMINED AND REGISTERED

AUDITOR FOR COLLECTION
DEC 11 1917
Auditor of Revenue.
ENTERED FOR AUDIT
DEC 7 1917

191

RECEIVED PAYMENT Two Hundred Forty-
Seven & - - - - - - - - 67 DOLLARS
100

TREASURER

2

[fol. 3] EXHIBIT 28. H. E. B.

This agreement, Made this ninth day of May in the year eighteen hundred and ninety-eight, between The Boston and Albany Railroad Company, hereinafter called the Albany Company, of the first part, The Philadelphia, Reading and New England Railroad Company, hereinafter called the New England Company, of the second part, George A. Fletcher and others acting on behalf of the holders of securities of The Philadelphia, Reading and New England Railroad Company, of the third part, and The Hartford and Connecticut Western Railroad Company, of the fourth part, witnesseth:

Whereas, The parties of the second, third and fourth part, acting under such powers as they severally possess or may obtain, intend to reorganize the New England Company aforesaid, and to create a new corporation to be called The Central New England Railway Company to take and hold the property, leaseholds and franchises of said New England Company, and intend to locate and build a branch line from a point at or near Tariffville, Connecticut, to a point at or near West Springfield, Massachusetts, and there to connect with the lines of the Albany Company in accordance with the terms of this agreement;

Now therefore, It is agreed that, upon the creation and organization of said new corporation to be called The Central New England Railway Company, and upon the location and construction of said branch railroad connecting the lines owned or controlled by said Central New England Railway Company with the lines of the Albany Company, said Central New England Railway Company and said Albany Company shall enter into and make a contract each with the other of the substance and tenor following, that is to say:

First. The Albany Company from and after the opening of the proposed branch line for the passage of regular trains [fol. 4] until the Thirtieth day of August in the year Nineteen hundred and forty, shall license and permit, subject to the regulation and control of the Albany Company as to the movement and government of trains, the said Central New England Railway Company and its successors to pass with

trains and locomotives over the line of the Albany Company between the point of connection west of the Connecticut River and the yard and engine houses at West Springfield in each direction, and further for passenger trains across the bridge over the Connecticut River and into the Union Station at Springfield, with the right to use in connection with such trains all present and future water stations and other facilities necessary for the accommodation of such trains and the traffic to be transported by them, the said Central New England Railway Company paying to the Albany Company therefor Fifteen thousand Dollars ($15,000) per annum in equal quarterly payments on the first days of January, April, July and October of each year, the first payment to be made upon the first quarterly period next succeeding the opening of the proposed branch line for the passage of regular trains. If the daily average number of trains shall exceed three freight trains of not more than thirty cars in each train in each direction, and three passenger trains in each direction, the price to be paid shall be increased in the proportion in which the increased number of trains exceeds the number of trains aforesaid, and this computation shall be made once in six months during the term of this contract and payment shall thereupon be made accordingly. If the said Central New England Railway Company shall take water from any of the water stations of the Albany Company, it shall share in the expense [fol. 5] of maintaining such stations in proportion to the consumption of water by each of the parties thereto, including therein the price paid by the Albany Company for water. If the Central New England Railway Company shall use the stalls in the engine house of the Albany Company, it shall pay One Dollar ($1) per day for each stall so used. The said Central New England Railway Company shall be permitted to erect a coal platform or trestle for the loading of its supply coal at some convenient point to be mutually agreed upon.

Second. The Albany Company shall transfer or switch loaded freight cars brought by the Central New England Railway Company to the West Springfield yard to a connection with the Boston and Maine Railroad's lines or The New York, New Haven and Hartford Railroad Company's lines in Springfield in either direction for the rate or sum

of Two Dollars ($2) per car without regard to destination or contents of such car, and shall move such freight so brought by the Central New England Railway Company, designed for points in Springfield in carload lots, excepting coal, for the rate or sum of thirty (30) cents per ton of two thousand (2,000) pounds; the rate or sum for so moving coal shall be fifty (50) cents per ton of twenty-two hundred and forty (2240) pounds. The foregoing rates include the return of empty cars and the hauling of empty cars furnished by the Central New England Railway Company to be loaded on the lines of any other Company and then returned. For such freight as is required to pass through the freight house of the Albany Company the rate or sum to be charged shall be fifty (50) cents per ton of two thousand (2,000) pounds, and in addition thereto a charge for the labor of handling, based upon the proportion which the business of the Central New England Railway Company bears to the total amount of the business passing through such freight [fol. 6] house, to be computed monthly, and only to include the expense of labor in such freight house.

Third: The Albany Company for passenger business shall sell tickets, handle baggage and take care of passenger trains in its passenger yard, and transfer through passenger cars to connecting lines.

Fourth: The Central New England Railway Company shall build and maintain an interlocking tower and its connections at the point of junction of its road with the road of the Albany Company. The necessary men for the operation of said tower shall be appointed and paid by the Albany Company and primarily deemed to be the servants of the Albany Company. Their compensation, however, shall be reimbursed to the Albany Company by the Central New England Railway Company, quarterly.

Fifth. The employees of the Albany Company while operating any signal or throwing any switch or performing any duty in connection with the operation of the rolling stock shall be considered to be the servants of that one of said parties the moving of whose rolling stock called for such operation or performance, and in case of any accident arising from the acts, omissions or neglects of said employees, if such operation or performance is occasioned by

the moving of the rolling stock of both parties, if it can be ascertained by whose rolling stock the injury is actually done, that party shall be responsible, but if that cannot be ascertained, then the responsibility for that accident shall be borne by both parties equally. Each party shall be liable for any damage done through failure or defect of its equipment. The Albany Company shall be liable for any damage [fol. 7] done through the failure or defect of its roadway, but in case of any interruption of business by any accident or disaster, the Central New England Railway Company or its successors or transferees shall have only the same temporary opportunities for the use of the tracks of the Albany Company proportioned to its business as the Albany Company then has and enjoys for its own traffic. All responsibility for baggage brought to said Union Station by either company and destined to a station on the road of the other Company shall be upon the forwarding company after such baggage is unloaded at said Union Station, and all responsibility for baggage delivered at said station to be forwarded by the Central New England Railway Company shall be upon said Central New England Railway Company from the time of its delivery, and all responsibility for baggage received at said station from said Central New England Railway Company for delivery in Springfield shall be upon the Central New England Railway Company from the time of such receipt until the same is delivered.

Sixth: The Central New England Railway Company and its successors shall make the payments required by this contract in accordance with the terms thereof.

Seventh: No transfer of this contract or the rights under it, in whole or in part, shall be made by the said Central New England Railway Company or its successors without the consent in writing of the Albany Company, and this contract is made upon this condition, that in case of a breach of any of the stipulations to be observed on the part of the Central New England Railway Company or of those claiming under it and a continuance of such breach for thirty days, or in case the rights under this contract shall be taken from [fol. 8] said Central New England Railway Company or its successor or transferee by process of law, by proceedings in bankruptcy or insolvency or for a receivership or otherwise,

the Albany Company or its successors may, while the default or neglect continues, or at any time after such taking by process of law, and notwithstanding any license or waiver of any prior breach of condition, without any notice or demand, terminate this contract and all rights acquired thereunder by the Central New England Railway Company or any person claiming by, through or under it.

In witness whereof, the parties hereto have hereunto set their names, or affixed their corporate seals duly attested, the day and year first aforesaid.

The Boston and Albany Railroad Company, by Edward D. Hayden, Vice-President. Attest: E. D. Hayden, Secretary. The Philadelphia, Reading and New England Railroad Company, by John W. Brock, President. Attest: W. R. Taylor, Secretary. Reorganization Committee, by George A. Fletcher, Chairman. Attest: J. W. Hamer, Secretary. The Hartford and Connecticut Western Railroad Company, by H. O. Seixas, President. Attest: E. R. Beardsley, Secretary.

[fol. 9] State of New York,
County of New York, ss:

On the 10th day of May in the year 1898, before me personally came John W. Brock, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in Philadelphia, Pennsylvania; that at the time of the execution of the foregoing instrument he was President of The Philadelphia, Reading and New England Railroad Company; that he knew the corporate seal of said Philadelphia, Reading and New England Railroad Company; that the seal affixed to the foregoing instrument was such corporate seal; that it was affixed by order of the board of directors of said Philadelphia, Reading & New England Railroad Company; and that he signed his name thereto by like order as President of said Philadelphia, Reading and New England Railroad Company; and the said John W. Brock, as such President of said Philadelphia, Reading and New England Railroad Company, also acknowledged before me that the foregoing instrument is the free act and deed of said Philadelphia, Reading and New England Railroad Company and of himself individually.

In witness whereof, I have hereunto set my hand and affixed my official seal this 10th day of May A. D. 1898.

P. M. Beam, Notary Public, Queens Co., Cert. filed in N. Y. Co. (Seal.)

[fol. 10] Acknowledgment (Notary)

State of Pennsylvania,
County of Philadelphia, ss:

I, M. Russell Thayer, Prothonotary of the County of Philadelphia and Clerk of the Courts of Common Pleas, of said County, which are Courts of Record, having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do certify, that J. H. Jefferies Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed Instrument and thereon written, was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania, residing in the county aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments in said State of Pennsylvania and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere, and that I am well acquainted with the handwriting of the said Notary Public and verily believe the signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the Laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 13th day of May in the year of our Lord one thousand eight hundred and ninety-eight (1898).

M. Russell Thayer, Prothonotary. (Seal.)

[fol. 11] State of Pennsylvania,
County of Philadelphia, ss:

On the 13th day of May A. D. 1898, before the undersigned, a notary public of the State of Pennsylvania, residing in the City of Philadelphia, duly commissioned, personally came the above named George A. Fletcher, who in due form of law acknowledged the foregoing indenture to

be his act and deed and desired that the same might be recorded as such.

Witness my hand and official seal the day and year above named.

J. H. Jefferies, Notary Public. (Seal.)

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

On the 13th day of May A. D. 1898, before me the undersigned, a notary public of the State of Pennsylvania, residing in the City of Philadelphia, duly commissioned, personally came the above named John W. Hamer, who in due form of law acknowledged the foregoing indenture to be his act and deed, and desired that the same might be recorded as such.

Witness my hand and official seal the day and year above named.

J. H. Jefferies, Notary Public. (Seal.)

[fol. 12] STATE OF NEW YORK,
County of New York, ss:

On the 10th day of May in the year 1898, before me personally came Henry O. Seixas, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the City of New York and State of New York; that at the time of the execution of the foregoing instrument he was President of the Hartford and Connecticut Western Railroad Company; that he knew the corporate seal of said Hartford and Connecticut Western Railroad Company; that the seal affixed to the foregoing instrument was such corporate seal; that it was affixed by order of the board of directors of said Hartford and Connecticut Western Railroad Company; and that he signed his name thereto by like order as President of said Hartford and Connecticut Western Railroad Company; and the said Henry O. Seixas, as such President of said Hartford and Connecticut Western Railroad Company, also acknowledged before me that the foregoing instrument is the free act and deed of said Hartford and Connecticut Western Railroad Company and of himself individually.

In witness whereof, I have hereunto set my hand and affixed my official seal this 10th day of May A. D. 1898.

P. M. Beam, Notary Public, Queens Co., Cert. filed in N. Y. Co. (Seal.)

[fol. 13] At a meeting of the Board of Directors of The Boston and Albany Railroad Company duly called and held at its office in Boston on Tuesday, the 24th day of May, 1898, the following vote was passed:

Voted:

That the Vice President is hereby authorized to execute, acknowledge and deliver in the name and on behalf of this Company, an agreement with the Philadelphia, Reading and New England Railroad Company, George A. Fletcher, acting on behalf of the holders of securities of the Philadelphia, Reading and New England Railroad Company, and the Hartford and Connecticut Western Railroad Company, that upon the creation and organization of a new corporation to be called The Central New England Railway Company, and upon the location and construction of a branch Railroad connecting the lines owned or controlled by said Central New England Railway Company with the lines of The Boston and Albany Railroad Company at or near West Springfield, The Boston and Albany Railroad Company will execute and deliver a contract with said Central New England Railway Company to license and permit the passage of trains and locomotives of said Central New England Railway Company over the lines of The Boston and Albany Railroad Company from the point of connection of said roads and the station in Springfield, and containing the terms for passenger and freight traffic agreed upon and expressed in this preliminary contract.

A true copy. Attest: E. D. Hayden, Secretary and Clerk. (Seal.)

[fol. 14] Commonwealth of Massachusetts,
County of Suffolk, ss:

On this 25th day of May, 1898, personally appeared Edward D. Hayden to me known, and who, being by me duly

sworn, says that he resides in the City of Woburn, County of Middlesex and Commonwealth of Massachusetts, and is the Vice President of The Boston and Albany Railroad Company described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said Company and was thereto affixed by order of the Board of Directors of said Company, and that he signed the same as Vice President of The Boston and Albany Railroad Company by virtue of a like order of the said Board of Directors; and said Edward D. Hayden also acknowledged before me that the foregoing instrument is the free act and deed of the said Boston and Albany Railroad Company.

Frank H. Ratcliffe, Notary Public. (Seal.)

[fol. 15] EXHIBIT 32. A. E. B.

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commere Commission, do hereby certify that the attached is true copy of the following:

Application filed June 15, 1921;
Return to questionnaire filed August 5, 1921; and
Report and certificate of the Commission filed and entered September 8, 1921, in Finance Docket No. 1479, In the Matter of the Application of the Central New England Railway Company for a Certificate of Public Convenience and Necessity,

the originals of which are now on file and of record in the Office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 26th day of January, A. D. 1927.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 16] BEFORE THE INTERSTATE COMMERCE COMMISSION

Bureau of Finance

Finance Docket No. 1479. Application No. —

Application of CENTRAL NEW ENGLAND RAILWAY COMPANY for a Certificate of Public Convenience and Necessity under Paragraphs 18 to 22, Inclusive, of Section 1 of the Interstate Commerce Act, as Amended by the Transportation Act, 1920

Central New England Railway Company, a corporation organized under the laws of the State of New York, makes application to the Interstate Commerce Commission for a certificate of public convenience and necessity under Section 1 of the Interstate Commerce Act, as amended by the Transportation Act, 1920, permitting the abandonment of operation of its line between Feeding Hills, Massachusetts, and Agawam Junction, Massachusetts, and states:

1. The postoffice address of applicant and of C. L. Bardo, President, A. E. Clark, Secretary, and E. G. Buckland, General Counsel, is 71 Meadow Street, New Haven, Connecticut.

2. The making and filing of this application has been approved at a meeting of the Board of Directors on May 3rd, 1921, at New Haven, Connecticut.

3. That applicant operates a branch line from Tariffville, Connecticut, to a junction with the Boston & Albany Railroad known as Agawam Junction near the border line between the towns of Agawam and West Springfield, Massachusetts, and proposes to abandon the operation of that portion of said branch between the station at Feeding Hills in the town of Agawam and said junction, all said portion of line being in Hampden County, Massachusetts, and, in addition, to abandon the operation of its trains between said junction and Springfield, Massachusetts, over the tracks of the Boston & Albany Railroad.

4. Applicant's lines are operated as a part of the system of The New York, New Haven and Hartford Railroad Company, and all freight on said Tariffville branch destined to and from Springfield and beyond can be handled over applicant's main line and the New York, New Haven and

Hartford Railroad via Hartford, Connecticut. Passenger service is furnished between Feeding Hills and Springfield by an electric line.

5. Applicant desires such hearing as the Commission may deem necessary.

Central New England Railway Company, by C. L. Bardo, President.

[fol. 17] Verification

STATE OF CONNECTICUT,
County of New Haven, ss:

C. L. Bardo makes oath and says that he is the President of Central New England Railway Company; that he has carefully examined each and all of the statements contained in the foregoing application; that they are true and correct to the best of his knowledge and belief; that said application is made with the approval and at the direction of the Board of Directors of the applicant, as appears by the minutes of said Board of May 3rd, 1921; and that he has been authorized by said Board to make said application.

C. L. Bardo.

Subscribed and sworn to before me, a Notary Public in and for the State and County above-named, this 10th day of May, 1921. Edmund Mason. My commission expires February 1, 1925.

[fol. 18] Aug. 5, '21. 708,274

Central New England Railway Company

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 1479

Original Questionnaire

In the Matter of Application under Paragraphs 18 to 21, Inclusive, Section 1, of the Interstate Commerce Act for Certificate of Public Convenience and Necessity Authorizing the Abandonment of the Portion of Line Between Feeding Hills and Agawam Junction, Massachusetts

New Haven, Connecticut, August 5th, 1921.

[fol. 19] Central New England Railway Company, having made application to the Interstate Commerce Commission

under paragraph 18 of section 1 of the Interstate Commerce Act, as amended, for authority to abandon the operation of that portion of its Tariffville Branch, so-called, between the station of Feeding Hills in the town of Agawam and the junction of said branch with the Boston & Albany Railroad at Agawam Junction, so called, near the border line between the towns of Agawam and West Springfield, Massachusetts, all said portion of line being in Hampden County, Massachusetts, and in connection therewith to abandon the operation of its trains between said junction and Springfield, Massachusetts, over the tracks of the Boston & Albany Railroad, which application is filed in the office of the Commission in Finance Docket No. 1479, hereby affirms that the notice of the application has been published in the form prescribed by the Commission, at least once during each of three consecutive weeks, in the "Springfield Republican" on June 24th, July 1st, and July 8th, 1921; that said newspaper is of general circulation in Hampden County, Massachusetts, which is the only County and State in which the line of railroad operation of which is proposed to be abandoned is situated; and the identified newspaper clipping hereto attached contains a true copy of the notice as published in said newspaper. The applicant also submits the following information required by the Commission:

1. When the line in question was constructed, for what purpose or purposes, and its history as an operating unit from the time of construction up to the date of this return.

On May 9th, 1898, the Philadelphia, Reading and New England Railroad Company, the Boston and Albany Railroad Company, the Hartford and Connecticut Western Railroad Company and the Reorganization Committee of the Philadelphia, Reading and New England Railroad Company executed a contract for a term of years to August 30th, 1949, providing for the construction of the Springfield Branch of the Hartford and Connecticut Western Railroad Company from Tariffville to Agawam Junction, with joint facilities and trackage rights over the Boston and Albany Railroad from Agawam Junction to the Union Station at Springfield, Massachusetts. It was opened for operation September 21st, 1902, partly over the East Granby and Suffield Railroad. This line was constructed for the pur-

pose of giving the Hartford and Connecticut Western Railroad an entrance into the City of Springfield, Massachusetts.

The Hartford and Connecticut Western Railroad Company in 1899, under authority of an Act of Connecticut passed May 19th, 1887 (Spec. Laws, Vol. 10, page 746) and an Act of Massachusetts passed June 3rd, 1889 (Chap. 386 as amended by Chap. 121, 1896) commenced the construction of the branch from Tariffville, Connecticut, to a point on the line of the Boston and Albany Railroad at Agawam, Massachusetts. There was some difficulty in completing that portion of the branch in the towns of East Granby and Suffield and the East Granby and Suffield Railroad was incorporated on August 12th, 1901, for the purpose of constructing a railroad from a point on the Springfield Branch of the Hartford and Connecticut Western Railroad [fol. 20] in the town of East Granby to a point on the same branch in the town of Suffield, about 4.2 miles.

The railroad was opened on September 21st, 1902, and on the same date the portions of the branch of the Hartford and Connecticut Western Railroad from Tariffville to Agawam were opened for operation which gave the Hartford and Connecticut Western Railroad a line from Tariffville, Connecticut, to Agawam, Massachusetts. On January 2nd, 1903, the East Granby and Suffield Railroad Company leased its railroad to the Central New England Railway Company for one year from January 1st, 1903. The Hartford and Connecticut Western Railroad Company was later enabled to complete the construction of the original branch in East Granby and Suffield which it opened for operation on March 9th, 1903, thus forming its present branch between Tariffville and Agawam, a distance of 14.35 miles. On August 30th, 1889, the Hartford and Connecticut Western Railroad Company leased its railroad and property to the Central New England and Western Railroad Company for one year. On February 4th, 1890, a new lease was made for fifty years from August 30th, 1890. The Hartford and Connecticut Western Railroad Company ceased to operate its property on August 30th, 1889. On August 25th, 1889, the Central New England Railway Company entered into a contract with the Boston and Albany Railroad Company supplemental to the contract of May 9, 1898, but for the same term; namely, August 30th, 1940, providing for joint

facilities and trackage rights between Agawam and Springfield, this contract providing that the Central New England Railway Company shall pay to the Boston and Albany Railroad Company $15,000.00 per annum, payable quarterly, if not more than three freight trains of thirty cars each in each direction shall be run and not more than three passenger trains in each direction, whatever number above this shall be run, the rental shall be increased in proportion to the increase of traffic. This agreement is in force at this date.

2. The general history of any past or existing receivership covering the line.

Since the Hartford and Connecticut Western Railroad Company was incorporated, March 31st, 1881, by an Act of Connecticut (Spec. Law, Vol. IX, page 169), and a Trustee's deed from David P. Nichols, Treasurer of the State of Connecticut, dated July 30th, 1881, recorded Vol. 2, page 285, Secretary of State of Connecticut, was executed and delivered to it, covering all the property rights and franchises of the Connecticut Western Railroad Company, as provided in the Act, there has been no receivership existing covering this line.

[fol. 21] 3. The investment cost of the line as shown by the applicant's books, stated as nearly as possible according to the primary accounts prescribed in the Interstate Commerce Commission classification of investment in road and equipment.

(Here follow side folio pages 22 and 23)

[fol. 24] 4. Whether any aid, gift, grant or donation of anything of value was contributed in consideration of its construction.

From the records as kept it is impossible to determine whether there was any aid, gift, grant or donation in consideration of the construction of the line in question.

5. The amount and description of any bonds, notes or other evidences of indebtedness resting in whole or in part upon the line in question, or upon the earnings thereof, or upon the earnings of any other line or lines of the applicant not covered by the application, and of any evidences of in-

	Total Amount	Account No. 1	Account No. 2	Account No. 3	Account No. 6	Account No. 8	Account No. 9	Account No.10	Account No.11
Year Ending June 30, 1907									
No A. & B. reported									
Year Ending June 30, 1908									
173 Feeding Hills,Mn.,S/T R. A. Bllogg	134.79	2.10				114.82			
Cost of materials removed from siding at Agawam Jct.,Mn.	496.26						340.20	154.06	
	859.97								
Year Ending June 30, 1909									
256 E. Granby,Ct., Land	400.00		400.00						
Year Ending June 30, 1910									
364 Feeding Hills,Mn.,Widening Sr. #13-A	1,740.39	No primary accounts stated in Construction books.							
369 E.Granby,Ct., Sidetrack	193.64	" "	"	"	"	"			
	1,934.03								
Year Ending June 30, 1911									
No A. & B. reported									
Year Ending June 30, 1912									
364 Feeding Hills,Mn.,Widening Br. #13-A	10.20				3.20				
388 Agawam Jct.,Mn., Interlocking Plant	3,917.07								
431 E.Granby,Ct.,Relocate Roadway at Station	569.88	4.28							
	4,527.15								
Year Ending June 30, 1913									
488 E.Granby,Ct.,Renew Br. #802-B	668.23	20.00	159.84						
487 Feeding Hills,Mn.,Frt.Hse.	899.46	2.75							
469 " " " Land	3,011.05		3,011.05						
	4,578.74								
Year Ending June 30, 1914									
408 E.Granby,Ct., Renew Br.#307-B	1,425.84	6.06							
469 Feeding Hills,Mn., Land	25.00								25.00
	1,450.34								
Year Ending June 30, 1915									
364 Feeding Hills,Mn.,Ext.Siding	59.91					22.75	32.39	4.77	
--- E.Granby,Ct., Real Estate	100.00		100.00						
503 Tariffville,Ct., Real Estate	250.00		250.00						
502 E.Granby,Ct.,Repl.frame platform	225.83								
	635.74								
Year Ending December 31, 1915									
344 Freemans,Ct., Ext. Br. #10.42	86.60	16.10			70.50				
366 Feeding Hills,Mn.,Concrete Foot Br. #11.13	20.86	3.28			17.66				
529 Tariffville,Ct.,Ren.Br. #11.05	36.49	6.19			30.00				
444 " Strength " "	29.36	29.36							
	173.08								
Forward-	13,207.38	90 16	3,220.89		121 35	137.57	307.81	149.08	25.00

	Account No. 2	Account No. 3	Account No. 6	Account No. 8	Account No. 9	Account No.10	Account No.11	Account No.12	Account No.15	Account No.16	Account No.27	Account No.76
.10				114.82				17.37				
					540.20	156.05						
	400.00											

ummary accounts stated in Construction books.

			3.20							7.00		
											3,927.07	
8.28										585.80		
0.00	159.84								488.39			
2.75	3,011 05									896.71		
8 06							88.00		2,419 29			
				22.75	32.39	4.97		9.80				
	100.00											
	260.00									225.88		
6.10			70.80									
3.28			17.66									
6.19			30.00									
9.36												
0 16	3,220.69		121 35	137.57	309.81	149.09	25.00	27.17	2,917.68	1,263.36	3,927.07	

		Total Amount	Account No.1	Account No.2	Account No.3	Account No.6	Account No.8	Account No.9	Account No.10	Account No.11
	Brought Forward	18,207.38	90.16	3,220.89		781.95	139.89	307.81	149.09	85.00
Year Ending December 31,1917										
866	Feeding Hills,Ms. Concrete Foot Br. @11.15	1,041.30				17.65				
639	Tariffville,Ct., Remew Br. @11.06	173.53	1.61			176.14				
866	Tariffville,Ct.,Streng. Br. @11.06	84.15	84.15							
709	Feeding Hills,Ms.,Br.@12.27	138.72								
---	Tariffville,Ct.,Remew Br. @12.07	86.35	58.35							
		1,496.11								
Year Ending December 31, 1918										
864	Freeman's,Ct.,Reb.Br.10.42	1,388.84				1,388 84				
866	Tariffville,Ct.,Streng. Br. @11.06	939.48				939.48				
		2,328.37								
Year Ending December 31, 1919										
864	Freeman's,Ct.,Reb.Br.@10.42	2,431.91	6.60			2,425.31				
Year Ending December 31, 1920										
864	Freeman's,Ct.,Reb.Br.@10.42	1,318.04	6 60		2,212.40	953.46	69.94		30.00	10.00
866	Tariffville,Ct., Strength. Br.@11.06	3,643.61	6.79			3,636.82				
		4,961.65								
January,February,March 1921										
866	Tariffville,Ct.,Strength. Br. @11.06	351.88	31.86			320.22				
	Total July 1,1906 to March 31,1921	34,677.26	368.60	3,220.89	2,212.40	7,936.06	67.81	307.81	179.09	35.00
	Cost to June 30,1906	476,556.78								
	Total to March 31,1921	501,234.04								

Account No.2	Account No.3	Account No.6	Account No.8	Account No.9	Account No.10	Account No.11	Account No.12	Account No.15	Account No.16	Account No.27	Account No.76
3,220.09		382.35	139.89	307.81	149.03	35.00	27.17	2,917.68	1,268.26	3,927.07	
		17.65						1,058.95			
		176.14									
								138.78			
		1,288 84									
		988.49									
		2,438.31									
	2,212.40	953.46	69.96		30.00	10.00	27.30				188.86
		5,636.82									
		320.22									
3,220.09	2,212.40	7,936.06	67.61	307.81	179.03	35.00	.13	4,118.41	1,268.26	3,927.07	188.86

debtedness not resting specifically upon the line in question, but which may be affected by the proposed abandonment.

The First Mortgage Four and One Half Per Cent. Bonds of the Hartford & Connecticut Western Railroad Company, aggregating $700,000, maturing July 1st, 1923, issued under an indenture of mortgage to the Treasurer of the State of Connecticut, Trustee, rest in part on the line in question and upon the earnings thereof. There is also outstanding a demand note of the Hartford and Connecticut Western Railroad Company held by the Central New England Railway Company in the amount of $819,781.71 at 5%, but said note creates no specific lien; it is an unsecured promise to pay.

Central New England Railway Company has outstanding the following evidences of indebtedness:

C. N. E. 1st Mtge. 4% 50 Yr. Gold Bonds	$14,650,000 00
Dutchess County Railroad 1st Mtge. 4½% Bonds	287,000 00
C. N. E. Genl. Mtge. 5% Bonds	6,000 00
C. N. E. Serial 6% Notes to Secretary Treasury of United States:	
Dated Nov. 15, 1920, due Nov. 15, 1931	60,000 00
" " " " " " " 1932	60,000 00
" " " " " " " 1933	60,000 00
" " " " " " " 1934	60,000 00
" " " " " " " 1935	60,000 00
Total	$15,243,000 00

None of the mortgage bonds of the Central New England Railway Company rest in whole or in part on the line in question or its earnings, but are secured by a mortgage of the owned lines of said Company.

The serial notes are secured by pledge of Central New England First Mortgage Four Per Cent. Fifty Year Gold Bonds.

[fol. 25] 6. A copy of the applicant's general balance sheet as of the latest date for which such statement is available.

[fol. 26] Central New England Railway Company

General Balance Sheet, March 31, 1921

Assets

		March, 1921.	
	Investments:		
701	Investment in Road and Equipment		23,552,973.78
702	Improvements on Leased Railway Property		
703	Sinking Funds		
704	Deposits in lieu of mortgaged property sold		
705	Miscellaneous Physical Property		63,722.45
706	Investments in Affiliated Companies:		
		Pledged	Unpledged
	(A) Stocks		
	(B) Bonds		
	(C) Notes		819,781.71
	(D) Advances		108,187.86
707	Other Investments:		
	(A) Stocks		5,000.00
	(B) Bonds		12,475.83
	(C) Notes		
	(D) Advances		
	(E) Miscellaneous		
	Total Investment		24,562,142.65
	Current Assets:		
708	Cash		327,388.37
709	Demand Loans and Deposits		
710	Time Drafts and Deposits		
711	Special Deposits		20,915.71
712	Loans and Bills Receivable		
713	Traffic and Car-Service Balances Receivable		126,227.50
714	Net Balance Receivable from Agents and Conductors		22,522.62

715	Miscellaneous Accounts Receivable		811,641.98
716	Material and Supplies		863,837.23
717	Interest and Dividends Receivable		1,275.49
718	Rents Receivable		
719	Other Current Assets		1,006.63
	Total Current Assets		2,174,518.53
	Deferred Assets:		
720	Working Fund Advances		1,743.60
721	Insurance and Other Funds		8,118.00
722	Other Deferred Asset		
	U. S. Government Deferred Assets		2,291,068.52
	Total Deferred Assets		2,300,930.12
	Unadjusted Debits:		
723	Rents and Insurance Premiums Paid in Advance		1,692.72
724	Discount on Capital Stock		
725	Discount on Funded Debt		214,624.54
726	Property Abandoned Chargeable to Operating Expenses		
727	Other Unadjusted Debits		1,554,744.07
	Par Value Holdings		
728	Securities Issued or Assumed—Unpledged	$479,400.00	
729	Securities Issued or Assumed—Pledged	750,000.00	
	Total Unadjusted Debits		1,771,061.33
	Grand Total		30,808,952.63

[fol. 27] Central New England Railway Company

General Balance Sheet, March 31, 1921

Liabilities

March, 1921

Stock:

		(b1) Total book liability	(b2) Respondent's holdings included in (b1)	
751	Capital Stock	8,550,000.00	12,400.00	8,537,600.00
752	Stock liability for conversion			
753	Premium on Capital Stock (Since July 1, 1909)			
	Total Stock			8,537,600.00

Government Grants:

754	Grants in aid of Construction			7,005.42

Long-term Debt:

		(b1) Total book liability	(b2) Respondent's holdings included in (b1)	
755	Funded Debt Unmatured	15,237,000.00	1,217,000.00	14,020,000.00
756	Receiver's Certificates			
757	Non-negotiable Debt to Affiliated Companies:			
	(A) Notes			
	(B) Open Accounts			
	Total Long-Term Debt			14,020,000.00

Current Liabilities:

758	Loans and Bills Payable	
759	Traffic and Car-Service Balance Payable	
760	Audited Accounts and Wages Payable	881,309.15
761	Miscellaneous Accounts payable	33,087.30
762	Interest Matured Unpaid	5,029.00

763	Dividends Matured Unpaid	1,440.00
764	Funded Debt Matured Unpaid	
765	Unmatured Dividends Declared	
766	" Interest Accrued	145,153.94
767	" Rents Accrued	17,460.90
768	Other Current Liabilities	9,645.02
	Total Current Liabilities	1,093,205.31
	Deferred Liabilities:	
769	Liability for Provident Funds	
770	Other Deferred Liabilities	3,058.81
	U. S. Government Deferred Liabilities	3,090,545.13
	Total Deferred Liabilities	3,093,603.94
	Unadjusted Credits:	
771	Tax Liability	14,169.61
772	Premium on Funded Debt	
773	Insurance and Casualty Reserves	11,618.50
774	Operating Reserves	45,165.97
775	Accrued Depreciation-Road	214,721.00
776	" " Equipment	741,904.57
777	" " Miscellaneous Property	
778	Other Unadjusted Credits	146,454.92
	Total Unadjusted Credits	1,174,034.67
	Obligations to Leased Roads for Equipment and Personal Property	209,988.59
	Corporate Surplus:	
779	Additions to Property through Income and Surplus	10,555.02
780	Funded Debt Retired through Income and Surplus	
781	Sinking Fund Reserves	
782	Miscellaneous Fund Reserves	
783	Appropriated Surplus not Specifically Invested	

Total Appropriated Surplus

784	Profit and Loss Credit Balance	2,567,885.69
	Income Account—Current Year	95,076.99
	Total Corporate Surplus	2,673,517.73
	Grand Total	30,808,952.63

[fol. 28] 7. A copy of the applicant's income account for each of the five years next preceding the current year, and of such income account for that portion of the current year for which figures are available.

(Here follows statement marked side folio page 29)

[fol. 30] 8. If the application covers less than the entire mileage operated by the applicant, the gross and net revenues and gross and net income for the portion sought to be abandoned, allocated thereto on a mileage pro rata basis.

[fol. 31] Central New England Railway Company

Income Statement, Year 1920

	Entire line	*Portion for which operations are sought to be abandoned
Railway Operating Revenue	7,818,474 97	157,933 19
Total Railway Oper. Expenses	8,397,673 10	169,632 99
Net Revenue from Rly. Oper.	579,198 13	11,699 80
Total Taxes and Uncollectible Railway Revenue	238,061 83	4,808 85
Railway Operating Income	817,259 96	16,508 65
Non Operating Income	549,915 86	11,108 30

	December 31, 1916
Railway Operating Revenue	5,208,198.45
Total Railway Oper. Expenses	2,941,140.30
Net Revenue from Rlwy.Oper.	2,267,058.15
Total Taxes and Uncollectible Railway Revenue	190,826.48
Railway Operating Income	2,076,231.67
Non-Operating Income	197,066.39
Gross Income	2,273,298.06
Deductions from Gross Income	1,358,647.59
Dividend Appropriations of Income	470,684.00
Net Income	443,966.47

In the figures for the years 1918, 1919 and 1920, a
Government guarantees have been eliminated to make
previous years.

(A) Dividend of $286,390.00 paid out of surplus.

(B) Additional amount of $520,342.00 representing dividends for 1918 paid out of surplus.

CENTRAL NEW ENGLAND RAILWAY COMPANY

Combined Income Statement for Five Years

1916 to 1920 inclusive

and Three Months ending March 31st, 1921.

	December 31, 1916	December 31, 1917	December 31, 1918	December 31, 1919	December 31, 1920	3 Months Ending Mar.31 1921
ating Revenue	5,208,198.45	5,477,288.17	6,063,135.70	6,737,408.85	7,818,474.97	2,196,242.11
Oper. Expenses	3,141,140.30	3,618,488.41	5,411,045.07	6,191,869.15	8,397,673.10	1,571,348.62
From Rlwy.Oper.	2,267,058.15	1,858,799.76	652,110.63	545,539 70	579,198.13	624.893.49
and Uncollectible evenue	190,826.48	220,906.42	196,175.64	226,422 95	238,061.83	64,556.45
ating Income	2,076,231.67	1,637,893.34	455,934 79	339,116.75	817,259.96	560,337.04
Income	197,066.39	52,672.88	155 899 42	406,518 76	549,915.86	103,410 88
	2,273,298 06	1,690,566.22	611,834.21	745,635.51	267,344.10	663,747.92
From Gross Income	1,358 647.89	1,452,785.62	1,473,838 87	1,711,291 93	2,492,786.84	566,232.40
propriations	470 684.00	- A	-	320,342 00B	-	-
	443,966.47	237,810.60	862,004.66	1,285 998.42	2,760 130.94	97,515.52

figures for the years 1918, 1919 and 1920, all rental compensation and ment guarantees have been eliminated to make the figures comparable with ous years.

ividend of $226,200.00 paid out of surplus.

dditional amount of $320,342.00 representing ividends for 1918 paid out of surplus.

	Entire line	*Portion for which operations are sought to be abandoned
Gross Income	267,344 10	5,400 35
Deductions from Gross Income	2,492,786 84	50,354 29
Dividend Appropriations of Income	.....	.....
Net Income	2,760,130 94	55,754 64

*Allocated upon pro rata basis of mileage operated.

[fol. 32] A full explanation of the statements filed in response to the last preceding question, showing the method used, and the probable effect of continued operation upon the applicant's system earnings as a whole, with reasons for the conclusion.

[fol. 33] Central New England Railway Company

Statement of Revenue and Expenses for Operation Portion of Springfield Branch for the year 1920 Between Feeding Hills and Agawan Jct. (2.1 Miles) and Agawan Jct. and Springfield (4 Miles)

Feeding Hills and Agawan Jct.

	Revenue	Expenses
Passenger Revenue	$108 84	$
Freight Revenue	766 80	
Expenses		4,637 77
Total	875 64	4,637 77
Loss from Operation		$3,762 13

Agawan Jct. and Springfield

	Revenue	Expenses
Passenger Revenue	$207 32	$
Freight Revenue	1,603 08	
Expenses of operating our train over the B. & A. tracks including wages of Train and Engine crews, Supplies, Lubricants, etc.		8,833 84

Use of tracks & station, Springfield	15,000 00
Switching cars and handling freight, Springfield	6,504.31
Wages of Towermen, Agawan Jct.	5,433 70
Maint. and Oper. Tower #44, Agawan Jct.	705 60
Maint. of Facil. at Agawan Jct.	403 40
Loss from Operation	$35,070 45

Recapitulation

	Revenue	Expenses
Feeding Hills and Agawam Jct	$875 64	$4,637 77
Agawam Jct. & Springfield	1,810 40	36,880 85
Total	$2,686 04	$41,518 62
Total Loss from Operation		$38,832 58

General Manager advises that only that portion of track north of Feeding Hills is to be abandoned, and that trains will still operate between Tariffville and Feeding Hills. Freight originating between these points and west of Tariffville destined north will be routed via Hartford.

[fol. 34] 10. The names of all cities and incorporated villages located upon the line in question, by counties, with the approximate population of each, and the source of the information as to such population, and the names of all other railroads serving them.

The following towns are located upon the line the operation of which is proposed to be abandoned.

	Population
West Springfield, Hampden County, Mass	11,339
Agawam, Hampden County, Mass	4,555

and on the portion of the Tariffville Branch the operation of which will be continued are:

Suffield, Hartford County, Conn	3,841
East Granby, Hartford County, Conn.	797

The City of Springfield, Hampden County, Massachusetts, population 102,971, is served to some extent by said line by

means of trackage rights over the Boston & Albany Railroad between Agawam Junction and Springfield.

The population of Hampden County, according to the Massachusetts State census of 1915 (which is the source of the information as to the population of West Springfield, Agawam and Springfield) was 262,944.

Suffield and East Granby, both located in Hartford County, Connecticut, will be affected to some extent by the discontinuance of operation between Feeding Hills and Agawam Junction, in that under the present arrangement they have a direct connection into Springfield for freight movements, whereas in case of the abandonment such freight will move by way of Hartford over the New York, New Haven and Hartford Railroad. Passengers, however, will have a direct route into Springfield by way of the railroad to Feeding Hills, thence by electric line. The Eastern portion of the town of Suffield is at present served by the Suffield Branch, so-called, of the New York, New Haven and Hartford Railroad, connecting with the main line between Hartford and Springfield.

The population of Hartford County, Connecticut, according to the United States census of 1910 (which is the source of the information as to the population of Suffield and East Granby) was 250,182.

Springfield is served by the Boston & Albany Railroad Company, the Boston & Maine Railroad, and The New York, New Haven and Hartford Railroad Company; West Springfield is served by the Boston & Albany Railroad Company; a portion of Agawam is served by that part of the Tariffville Branch of the Hartford and Connecticut Western Railroad Company operation of which is not proposed [fol. 35] to be abandoned; the towns of Suffield and East Granby are served by that portion of the Tariffville Branch operation of which it is not proposed to abandon.

11. The approximate population of the whole territory tributary to the line in question, with explanation of the method by which the limits of such territory were defined.

The approximate population of contributing territory to the line in question is 17,000. A portion of the territory, including this population, is served by that part of the Tariffville Branch of the Hartford and Connecticut West-

ern Railroad operation of which is not to be abandoned, but which would not have as direct an entrance into Springfield. Any territory outside of what is mentioned above would be better served by some other railroad, and would thus fall without the territory tributary to the line in question.

12. The distance in miles from another line of railroad of each city or village named in question 10.

Each of the towns or cities mentioned in question 10 is served by one or more railroads other than the portion of the line it is proposed to abandon. Springfield is on the Boston & Albany, the Boston & Maine, and the New York, New Haven and Hartford Railroads; West Springfield is on the Boston and Albany Railroad; Agawam is a rural territory and is in part still served by that part of the Springfield (Tariffville) Branch operation of which is not proposed to be abandoned. Suffield and East Granby are served by that portion operation of which is not proposed to be abandoned.

13. The names of all railroads with which the line in question connects for interchange of traffic and the points of such connection and interchange.

The Central New England Railway Company connects with the Boston & Albany Railroad Company at Agawam Junction, having trackage rights by rental agreement from Agawam Junction to Springfield, Massachusetts, interchange being effected at Springfield with the Boston & Albany Railroad.

14. The tonnage handled by the line in question, classified by principal commodities, for each of the five years next preceding the current year, stating separately the tonnage (a) originating and destined to points on the line and (b) interchanged with connecting carriers and moving over other lines.

(Here follows statement marked side folio page 36)

[fol. 37] 15. The nature of industries located in the territory tributary to the line, such as farming, mining, lumbering, manufacturing, etc., how long established and the ex-

CENTRAL NEW ENGLAND RAILWAY COMPANY

STATEMENT SHOWING APPROXIMATE FREIGHT EARNINGS OF THAT PART OF TARIFFVILLE BRANCH BETWEEN FEEDING HILLS AND SPRINGFIELD. CALENDAR YEARS OF 1916 1917 1918, 1919, 1920 AND FIRST SIX MONTHS OF 192

		NET TONS	FREIGHT CHARGES	C.N.E.R.R.CO	BRANCH EARNINGS ON TON MILS BASIS
1916	Local	14 943	$ 22,121.10	$ 22,121.10	
	Interline	29 006	75,446.71	39 390 00	
	Total	43,949	$ 97,567 81	$ 61 511.10	$ 2,408 07
1917	Local	12,860	$ 21,849.34	$ 21 849 34	
	Interline	30,265	81,411.54	42 263 73	
	Total	43,125	$103,260 88	$ 64,113 07	$ 2,36 56
1918	Local	6,533	$ 15 059.75	$ 15 059 75	
	Interline	27,063	83,158.56	43 662 43	
	Total	33 596	$ 98,2 8.31	$ 58,722 18	$ 2 084.21
1919	Local	4 510	$ 11,265.93	$ 11,265.93	
	Interline	18,177	59,537.60	31,754.25	
	Total	22 68-	$ 70,803 53	$ 43,020.18	$ 1,505.51
1920	Local	3,54-	$ 10,775.76	$ 10,775.76	
	Interline	15,713	67,284.52	35 144.30	
		19,854	$ 78,060 28	$ 45,920.06	$ 1,854.45
6 months 1921	Local	1,416	$ 4,994.73	$ 4,994.73	
	Interline	4,347	22,183.85	$ 11,750.97	
	Total	5,763	$ 27,177.96	$ 16,745.70	$ 534.23
GRAND TOTAL		188,374	$475,088.77	$290,032.89	$10,754.05

No. C3533.

CENTRAL NEW ENGLAND RAILWAY COMPANY

ACCOUNTING DEPARTMENT — OFFICE OF AUDITOR OF PASSENGER RECEIPTS

Statement showing approximate earnings on line between Feeding Hills and Springfield for five years and six months, ended June 30-1921.

	1921*		1920		1919		1918		1917		1916	
	Fares	Rev.	Fares	Rev.	Fares	Rev.	Fares	Rev.	Fares	Rev.	Fares	Rev.
Local Tickets (Including Condrs. Fares.)	860	$199.64	1857	$381.61	2060	$390.40	1910	$362.90	3289	624.87	4351	$825.69
Excursion Tickets	-	-	-	-	-	-	164	55.76	925	314.50	1157	393.38
Interline	1	.23	6	1.30	2	.36	4	.75	1	.19	3	.57
Commutation	-	-	-	-	-	-	-	-	-	-	-	-
Excess Baggage) Storage etc.)	-	-	-	-	-	-	-	-	-	-	-	-
Milk	-	-	-	-	-	-	-	-	-	-	-	-
Mail	-	71.76	-	163.62	-	264.16	-	264.16	-	263.91	-	263.91
Total	869	$271.63	1863	$ 846.53	2062	$654.94	2078	$683.58	4215	1203.47	5511	$1484.55

* Six months

Note: In June 1917, the train service was reduced one half. In October 1918, the excursion tickets were withdrawn. On August 26.1918, the fares were increased 20%.

Approved:

A. MACDONELL,
Auditor of Revenue.

A.R.DOWN,
Auditor of Passenger Receipts.

New Haven, Conn., July 21,1921.

tent to which each such industry is dependent upon the line in question for transportation.

The industries along the line proposed to be abandoned are principally tobacco growing, manufacturing and farming, the majority of which have been established for many years; in fact, prior to the construction of the Tariffville-Springfield Branch in 1902. There being no stations discontinued by reason of this proposed abandonment, the communities and industries will be served by the same transportation lines as at present, except there will be no direct movement between Feeding Hills, Massachusetts, and Springfield, Massachusetts, over the tracks of the Central New England Railway. The passenger traffic can be handled via the street railway, and the freight traffic can be handled via Tariffville over the Central New England to Hartford, then over the New York, New Haven and Hartford Railroad to Springfield. The majority of these industries are equipped with automobile trucks or similar methods of transportation for the handling of their business and are dependent upon the railroad for transportation to a very small extent.

16. The passenger traffic handled on the line in question for each of the five years next preceding the current year, giving separately the number of local and connecting line passengers (if the latter designation is applicable) and the revenue derived from each class.

(Here follows statement marked side folio page 38)

[fol. 39] 17. If the volume of traffic, freight or passenger, or both, has diminished during recent years, any reasons which may be assigned for such decrease.

The reduction in local and interline business handled on the Tariffville Branch has resulted partly from a re-arrangement of train service but to a greater extent because of motor truck competition. Motor trucks have taken the larger part of the freight business while privately owned automobiles have taken the greater part of the passenger business, making continued operation of the line unprofitable.

18. What effort, if any, has been made to dispose of the line in question so as to insure continued operation.

No effort has been made to dispose of the line in question, as the territory served does not produce sufficient freight or passenger traffic to make it inviting to anyone to operate.

19. Opinion of counsel that the proposed abandonment is within the charter powers of the applicant.

[fol. 40] Central New England Railway Company

Office of the Vice President & General Counsel

New Haven, Conn., August 4th, 1921.

Interstate Commerce Commission, Washington, D. C.

Dear Sirs: The undersigned states that he is General Counsel of the Central New England Railway Company; that in his opinion the proposed abandonment of the operation of its line between the station at Feeding Hills and Agawam Junction, so called, in the State of Massachusetts, said line being held under lease from the Hartford and Connecticut Western Railroad Company, a Connecticut corporation, is within the charter powers of both Companies; that the said line was constructed and is operated in Massachusetts by permission of the General Court Acts and Resolves 1889, Chapter 386, amended by Acts and Resolves 1896, Chapter 121, wherein it is provided that the Hartford and Connecticut Western Railroad Company shall be subject to the general laws then or thereafter in effect; and, that said abandonment will be legal when authorized by the Interstate Commerce Commission pursuant to the provisions of the Interstate Commerce Act.

Yours very truly, E. G. Buckland, General Counsel.

[fol. 41] 20. All reasons relied upon in support of the application.

Proposed abandonment is from a point approximately 350 feet northerly of the passenger station at Feeding Hills, Massachusetts, extending a distance of approximately 1.87 miles to the end of the Branch at Agawam Junction, as indicated in red on blueprint attached. It is also intended

SPRINGFIELD TO TARIFFVILLE.

WESTWARD. C. N. E. RY.

Distance from Springfield	STATIONS.		Distance between Stations	901 Ex. Sun. 1st Class Mixed		
				A M		
0.00	*Springfield*	N	0.00	8.20	.....	.....
4.05	Agawam Jct.	N	4.05	8.33	.....	.....
6.11	Feeding Hills	D	2.06	⚑ 8.42	.....	.....
9.77	Freemans		3.66	f 8.53	.....	.....
11.62	West Suffield	D	1.85	⚑ 9.00	.....	.....
12.76	Sheldon Street		1.14	f 9.06	.....	.....
15.35	East Granby	D	2.59	⚑ 9.15	.....	.....
18.34	Tariffville	D	2.99	9.25	.....	.....
		Arrive		A M		
	Note references ☞					

TARIFFVILLE TO SPRINGFIELD.

EASTWARD. C. N. E. RY.

Distance from Tariffville	STATIONS.		Distance between Stations	900 Ex. Sun. 1st Class Mixed	
				P M	
0.00	Tariffville	D	0.00	2.15	.....
2.99	East Granby	D	2.99	⚑ 2.30	.....
5.58	Sheldon Street		2.59	f 2.40	.....
6.72	West Suffield	D	1.14	⚑ 2.49	.....
8.57	Freemans		1.85	f 3.00	.....
12.23	Feeding Hills	D	3.66	⚑ 3.25	.....
14.29	Agawam Jct.	N	2.06	3.40	.....
18.34	*Springfield*	N	4.05	3.55	.....
		Arrive		P M	
	Note references ☞				

The time shown at *Springfield* is for information only.

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to abandon operation of trains of the Central New England Railway Company between Agawam Junction and Springfield over the tracks of the Boston & Albany Railroad, a distance of approximately 4.05 miles, as indicated in yellow on blueprint attached, it now being handled under rental agreement.

There is not sufficient volume of traffic over the line proposed to be abandoned to warrant continuation of the high operating cost, including the expensive rental for the use of the Boston & Albany tracks, signal station at Agawam Junction, passenger and freight facilities at Springfield, making it essential in the interest of economical operation that the proposed abandonment be effected. Furthermore, the present service, consisting of one round trip of a combination freight and passenger train in each 24 hour period, as indicated on attached sheet extracted from time table 84, in effect June 5th, 1921, is more than sufficient to care for the passenger and freight traffic, as most of the passenger traffic is now handled by trolley cars operating between Springfield and Feeding Hills every 30 minutes, and the freight traffic can be handled via Tariffville and Hartford just as expeditiously as it is handled at present via the direct route, so that the proposed abandonment would not affect the transportation of freight of the industries located in that vicinity, nor would it have any bearing on the transportation of through freight.

When the line was constructed, it was the intention to have another route for business from the southern and middle states to central and upper portion of the New England states, but the traffic never materialized, as competitive lines retained the business.

(Here follows side folio page 42)

[fol. 43] **(Map)**

C. N. E. Ry.

Plan Showing Portion of Tariffville Branch to be Abandoned

June 2, 1921

Scale: $\frac{1}{62500}$.

Red: Leased and Operated by Central New England Railway Company to be abandoned.

Yellow: Boston & Albany Railroad Company Maine Line used under Rental Agreement.

[fol. 44] 21. A tracing of the original map or a blue print or white print of the original tracing on sheets 24″ x 56″ with plain lined margins, the inside dimensions of which shall be 23″ x 55″, drawn to a scale of 1″=200′ or 1″=400′, showing the location and route of the line affected by the proposed abandonment, with its relation, within the limits of the sheet, to other railroads and other common carriers in the same territory. Also a skeleton index or route map, drawn to a scale of not less than ¼″=1 mile on which shall be shown the line proposed to be abandoned, with its relation to other railroads or other common carriers that are within 20 miles on either side thereof and which shall be shown at any convenient place on the first sheet of the map described above, if desired, or on a separate sheet of the dimensions given above, all to be substantially in accordance with Map Order, so called, pertaining to steam railway carriers, made and entered by the Commission under date of January 12, 1914, and modified and supplemented by Valuation Orders Nos. five (5), six (6) and twenty-three (23).

[fol. 45] (Map)

Right of Way and Track Map

Central New England Ry. Co.

(Lessee from the Hartford and Connecticut Western R. R. Co.)

Tariffville Branch,

Feeding Hills to Agawam Jct., Mass.

Office of Designing Engineer, New Haven, Conn.

May 7, 1921

Scale: 1"= 200'.

[fol. 46] Profile

Central New England Ry. Co.

(Lessee from the Hartford and Connecticut Western R. R. Co.)

Tariffville Branch

Feeding Hills to Agawam Jct., Mass.

Office of Designing Engineer, New Haven, Conn.

May 7, 1921

Scales: Hor. 1"=400'; vert. 1"=20'.

[fol. 47] Verification

STATE OF CONNECTICUT,
County of New Haven, ss:

C. L. Bardo makes oath and says that he is the President of Central New England Railway Company, applicant herein; that he has been authorized by proper corporate action on the part of said applicant to verify and file with the Interstate Commerce Commission the foregoing return

to questionnaire of said Commission in respect of the application in Finance Docket No. 1479; that he has carefully examined all of the statements referred to in said return and the exhibits attached thereto and made a part thereof; that he has knowledge of the matters set forth in such return and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information and belief.

C. L. Bardo.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this 4th day of August, 1921. Edmund J. Moore. My commission expires February 1st, 1925.

[fol. 48] I, James E. Welch, depose and say that I am advertising manager for The Republican and The Daily News newspapers published by The Republican in the city of Springfield Masachusetts, and that I caused to be published in the June 24, July 1 and July 8, 1921 editions of The Republican an advertisement for The Central New England Railroad Co. and that true copy of said is attached herewith.

J. E. Welch.

Commonwealth of Mass.,
County of Hampden, ss:

Then, on this 14th day of July A. D. 1921 personally appeared before me the above named James E. Welch and made oath that the foregoing affidavit by him subscribed is true.

Allen G. Russell, Notary Public. Com. Expires 2/11/1927.

Notice

Central New England Railway Company hereby gives notice that on the 14th day of June, 1921, it filed with the Interstate Commerce Commission at Washington, its application for a certificate of public convenience and necessity to abandon a branch line of railroad in Hampden County, Massachusetts.

Pursuant to the requirements of the commission, said application is now published, as follows:

Before the Interstate Commerce Commission

Application of Central New England Railway Company for a Certificate of Public Convenience and Necessity Under Paragraphs 18 to 22, Inclusive, of Section 1 of the Interstate Commerce Act, as Amended by the Transportation Act, 1920.

Central New England Railway Company, a corporation organized under the laws of the State of New York, makes application to the Interstate Commerce Commission for a certificate of public convenience and necessity under Section 1 of the Interstate Commerce Act, as amended by the Transportation Act, 1920, permitting the abandonment of operation of its line betwen Feeding Hills, Massachusetts, and Agawam Junction, Masachusetts, and states:

1. The postoffice address of applicant and of C. L. Bardo, President; A. E. Clark, Secretary, and E. G. Buckland, General Counsel, is 71 Meadow Street, New Haven, Connecticut.

2. The making and filing of this application has been approved at a meeting of the Board of Directors on May 3rd, 1921, at New Haven, Connecticut.

3. That applicant operates a branch line from Tariffville, Connecticut, to a junction with the Boston & Albany Railroad known as Agawam Junction, near the border line between the towns of Agawam, and West Springfield, Massachusetts and proposes to abandon the operation of that portion of said branch between the station at Feeding Hills in the town of Agawam and said junction, all said portion of line being in Hampden County, Massachusetts, and, in addition to abandon the operation of its trains between said junction and Springfield, Massachusetts, over the tracks of the Boston & Albany Railroad.

4. Applicant's lines are operated as a part of the system of The New York, New Haven and Hartford Railroad Company, and all freight on said Tariffville branch destined to and from Springfield, and beyond can be handled over applicant's main line and the New York, New Haven and Hartford Railroad via Hartford, Connecticut. Passenger service is furnished betwen Feeding Hills and Springfield by an electric line.

5. Applicant desires such hearing as the Commission may deem necessary.

Central New England Railway Company, by
(Signed) C. L. Bardo, President.

Verification

STATE OF CONNECTICUT,
County of New Haven, ss:

C. L. Bardo makes oath and says that he is the President of Central New England Railway Company; that he has carefully examined each and all statements contained in the foregoing application; that they are true and correct to the best of his knowledge and belief; that said application is made with the approval and at the direction of the Board of Directors of the applicant, as appears by the minutes of said Board of May 3rd, 1921; and that he has been authorized by said Board to make said applications.

(Signed) C. L. Bardo.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this 10th day of May, 1921. (Signed) Edmund J. Moore. My commission expires February 1st, 1925. (Seal.)

[fol. 49] Received Sep. 13, 1921, Bureau of Dockets.

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 1479

In the Matter of the Application of THE CENTRAL NEW England Railway Company for a Certificate of Public Convenience and Necessity

Submitted September 3, 1921. Decided September 8, 1921

Certificate issued authorizing the abandonment of a line of railroad in Hampden county, Mass.

E. G. Buckland for applicant.

Report of the Commission

Division 4, Commissioners Daniels and Potter

By DIVISION 4:

The Central New England Railway Company, a carrier by railroad subject to the interstate commerce act, on Jun

15, 1921, filed an application for a certificate that the present and future public convenience and necessity permit the abandonment of a line of the applicant's railroad extending from the station of Feeding Hills in the town of Agawam to a point where said line connects with the Boston & Albany Railroad, both in Hampden county, Mass., a distance of approximately 1.87 miles. No representations were made by the authorities of the state of Massachusetts either for or against the granting of the application. The case was submitted without formal hearing.

The applicant owns and operates about 300 miles of track in its entire system. Its trains enter Springfield, a city of more than 100,000 inhabitants, by using 4.05 miles of track of the Boston & Albany railroad. Under the trackage agree-[fol. 50] ment the applicant is to pay the Boston & Albany Railroad Company $15,000 a year for the right to operate over this track not more than 3 freight trains of 30 cars each and 3 passenger trains daily. This agreement expires August 30, 1940.

The applicant proposes to abandon about 1.87 miles of track extending from Agawam to its connection with the Boston & Albany. The traffic is very light over this line; it is handled in one mixed train a day at the present time and it is not likely to increase in the near future. From Agawam an electric line runs directly into Springfield, hauling passengers and light freight. For the year 1920 the revenue derived from the line proposed to be abandoned was $2,686.04, and the operating expenses were $41,518.62, resulting in an operating loss of $38,832.58.

Upon the facts presented we find that the present and future public convenience and necessity permit the abandonment of the line in question. A certificate to that effect will accordingly be issued.

[fol. 51] Certificate

At a Session of the Interstate Commerce Commission, Division 4, Held at Its Office in Washington, D. C., on the 8th Day of September, A. D. 1921

Finance Docket No. 1479

In the Matter of the Application of The Central New England Railway Company for a Certificate of Public Convenience and Necessity.

Investigation of the matters and things involved in this proceeding having been had, and said Division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity permit the abandonment by the Central New England Railway Company of its line of railroad extending from the station of Feeding Hills in the town of Agawam to a point where said line connects with the Boston & Albany Railroad, both in Masachusetts, as described in the application and report aforesaid:

It is ordered, That said Central New England Railway Company be, and it is hereby, authorized to abandon said line of railroad;

It is further ordered, That said Central New England Railway Company, when filing schedules canceling tariffs applicable to said line of railroad, shall in such schedules make specific reference to this certificate by title, date and docket number.

By the Commission, Division 4.

George B. McGinty, Secretary.

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Supreme Court of the United States.

OCTOBER TERM, 1928.

No.

CENTRAL NEW ENGLAND RAILWAY COMPANY,
PETITIONER.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT IN AND FOR THE COUNTY OF SUFFOLK AND COMMONWEALTH OF MASSACHUSETTS.

To the Honorable the Justices of the Supreme Court of the United States:

Your petitioner, Central New England Railway Company, respectfully represents the following facts:

First: On October 25, 1899, your petitioner, Central New England Railway Company, entered into a contract (Exhibit 3) with The Boston & Albany Railroad Company. By two mesne assignments the contract was transferred to New York Central Railroad Company.

Second: The contract provided in chief that The Boston & Albany Railroad Company, from and after the opening of a branch line then in process of construction by your petitioner until August 30, 1940, should license and permit, subject to the Albany Company's control and government of the trains, your petitioner to pass over with its trains about four miles of main-line track of The Boston & Albany Railroad into Springfield, Massachusetts, your petitioner paying therefor fifteen thousand dollars ($15,000) a year, with a provision for increased payment if the number of trains exceeded a specified number.

Third: Your petitioner constructed the branch line referred to from its lines in the south through Feeding Hills

Connecticut, to a point of connection on The Boston & Albany Railroad known as Agawam Junction, about four miles west of Springfield. This branch line was the only physical connection between your petitioner's rails and those of The Boston & Albany. The only way in which your petitioner could get its trains onto the tracks covered by the contract was over this line from the south through Feeding Hills. The contract gave your petitioner no right to operate independently on Boston & Albany rails, and there was no station between Agawam Junction and Springfield. The only way in which your petitioner could operate under the contract was by coming from the south over this branch line through Feeding Hills and Agawam Junction to Springfield. Whatever rights were received by your petitioner under the contract were entirely dependent upon and ancillary to such operation of its trains from the south through Feeding Hills. Failure to operate over this branch north of Feeding Hills necessarily involved a termination of the contract on which suit is brought because there could then be no operation by your petitioner over the Albany's tracks between Agawam Junction and Springfield.

Fourth: On September 15, 1902, your petitioner began the regular operation of its trains over this branch and into Springfield over the tracks of The Boston & Albany Railroad. This operation by your petitioner continued with a gradually decreasing number of trains operated until December 15, 1921. Payments at the annual rate of $15,000 a year were made by your petitioner for the period from September 15, 1902, to December 15, 1921. Up to the last-named date all charges rendered against your petitioner under the contract have been paid.

Fifth: In May, 1921, your petitioner applied (Exhibit 32) to the Interstate Commerce Commission, under paragraphs 18 to 22, inclusive, of section 1 of the Interstate Commerce Act as amended by the Transportation Act of 1920 (41 U.S. Stats. at Large 474), for a certificate of public convenience

and necessity covering the abandonment of its operation over the above-mentioned branch line and The Boston & Albany tracks from Feeding Hills into Springfield. All the statutory requirements regarding the filing, notification and service of this application were fully complied with, and on August 5, 1921, your petitioner filed answers to the questionnaire issued by the Interstate Commerce Commission giving all the facts covering the operation of the branch to be abandoned.

On September 8, 1921, the Interstate Commerce Commission issued on the application of your petitioner a certificate of public convenience and necessity in which it was *certified* that "the present and future public convenience and necessity permit the abandonment by the Central New England Railway Company of its line of railroad extending from the station of Feeding Hills in the town of Agawam to a point where said line connects with the Boston & Albany Railroad," and "*Ordered* that said Central New England Railway Company be, and it is hereby authorized to abandon said line of railroad."

Sixth: On November 7, 1921, your petitioner informed The Boston & Albany Railroad that by virtue of the above certificate of the Interstate Commerce Commission it would, effective December 15, 1921, discontinue operation of its lines north of Feeding Hills, and between there and Agawam Junction, and cease payments under the contract of October 25, 1899.

Seventh: On December 15, 1921, your petitioner, in pursuance of the above order of the Interstate Commerce Commission, abandoned its lines north of Feeding Hills and ceased the operation of trains over the branch line constructed under the contract and into Springfield. After the abandonment of this line, which was part of that constructed under the contract as set out in paragraph third of this petition, it was physically impossible for your petitioner to operate under the contract. Termination of the

contract, on which suit is brought, was necessarily incidental to your petitioner's carrying out the Commission's order, and since that date no further contract payments have been made by your petitioner.

Eighth: On April 5, 1922, action for breach of contract was begun against your petitioner in the Superior Court for Suffolk County in the Commonwealth of Massachusetts.

Ninth: On or about February 23, 1927, said Superior Court denied the efficacy of the amended Interstate Commerce Act and the certificate of the Commission issued thereunder as a defense to the action, and a verdict of $169,012.72 was entered against your petitioner.

Tenth: On or about February 20, 1928, your petitioner's substitute bill of exceptions to the rulings of said Superior Court was filed in the Supreme Judicial Court for the Commonwealth of Massachusetts.

Eleventh: On or about June 14, 1928, said Supreme Judicial Court, the highest court of the Commonwealth in which a decision could be had, handed down an opinion and rescript dismissing all your petitioner's exceptions. The opinion was based on the theory that by paragraphs 18 to 21 of section 1 of the Interstate Commerce Act as amended by the Transportation Act of 1920 (41 U.S. Stats. 474), Congress had authorized the Interstate Commerce Commission to sanction the abandonment of a contractual obligation such as existed in this case, but that in this particular case the certificate and order of the Commission were not a defense to the action because the court could not find clearly that the Commission intended to deprive The Boston & Albany Railroad Company, or its successor, of its rights under the agreement with your petitioner (see 8th and 9th paragraphs of Opinion).

Twelfth: On June 20, 1928, the petitioner applied to the Chief Justice of said Supreme Judicial Court for a reargument of the federal question concerning the interpretation and efficacy of the Interstate Commerce Act as amended.

This application was based on the ground that the opinion of said Supreme Court was erroneous in attempting to state the intention of the Interstate Commerce Commission on a matter in which such intention properly played no part. This application set out clearly that private contracts were affected by force of the Act of Congress, and that the intention of the Commission as to any particular obligation was quite immaterial. The application was denied on June 29, 1928.

Thirteenth: On July 30, 1928, a final judgment of $183,606.96 was entered against your petitioner by said Superior Court for Suffolk County.

Fourteenth: Your petitioner is advised and alleges that said judgment of the Superior Court as affirmed by the Supreme Judicial Court is erroneous, and should be reviewed by this court—

1. Because the judgment and opinion of the Supreme Judicial Court dismissing your petitioner's exceptions fail to recognize the validity as a defense to the action of the certificate and order of the Interstate Commerce Commission, issued, in the proceeding numbered 1749 on its finance docket, under paragraphs 18 to 22 of section 1 of the Interstate Commerce Act as amended by the Transportation Act of 1920 (41 U.S. Stats. at Large 474).

2. Because the judgment as affirmed by the decision dismissing your petitioner's exceptions denies entirely to your petitioner the right, claimed by it under the amended Interstate Commerce Act (41 U.S. Stats. at Large 474) as applied, to cease operation and further payments under the contract sued on with impunity.

3. Because the judgment as affirmed by the decision dismissing your petitioner's exceptions denies to your petitioner the validity of the amended Interstate Commerce Act (41 U.S. Stats. 474) as a defense to an action for damages arising from action covered by a certificate and order issued by the Interstate Commerce Commission.

4. Because the judgment as shown by the opinion of the Supreme Judicial Court dismissing your petitioner's exceptions proceeds on the theory that the certificate and order of the Interstate Commerce Commission is invalid as a defense to the action because the Commission did not affirmatively intend to abrogate the obligation on which suit was brought, whereas the effect on private contracts of orders issued by the Commission under paragraphs 18 to 22 of section 1 of the amended Act is a question depending, not upon the Commission's intention as to the particular contract, but upon the legal interpretation of the Act of Congress.

5. Because the judgment as shown by the opinion of the Supreme Judicial Court dismissing your petitioner's exceptions proceeds on the theory that the certificate and order of the Interstate Commerce Commission is invalid as a defense to the action, on the ground that the Commission did not affirmatively intend to abrogate the obligation sued on, whereas the Commission has properly pointed out (131 I.C.C. 421) that it has no power under paragraphs 18 to 22 of section 1 of the amended Interstate Commerce Act to authorize, as such, the abrogation of contract obligations.

6. Because the judgment, as shown by the opinion of the Supreme Judicial Court dismissing your petitioner's exceptions, relies upon the alleged fact that the Interstate Commerce Commission did not intend to adjudicate that the annual $15,000 payment was an operating charge of your petitioner, whereas the accounting nature of said annual payments is immaterial on the question as to the legal effect of the action of Congress and the Interstate Commerce Commission and said annual payments were properly operating charges of your petitioner and have been so adjudicated by the Interstate Commerce Commission.

7. Because the judgment as affirmed by the opinion of the Supreme Judicial Court dismissing your petitioner's

exceptions renders ineffective Congressional legislation and action thereunder, which was passed for the purpose of relieving burdens on the interstate operations of interstate common carriers.

8. Because the denials of your petitioner's motions to dismiss on jurisdictional grounds deny to your petitioner the rights given by sections 207 and 208 of the amended Judicial Code (U.S. Code Ann. title 28, secs. 41 (28), 46; 36 U.S. Stats. at Large 1148, and 38 U.S. Stats. at Large 219), although the inevitable effect of said denials and judgment is to limit the application of an order of the Interstate Commerce Commission, suspend the operation of the order as against the agreement sued on, and annul its effect to a certain extent.

9. Because the questions presented are federal questions of public importance and of general interest to the interstate railroads of the country, not heretofore determined by this court, which have been decided by the state courts of Massachusetts in a way not in accord with the law and applicable decisions of this court. See—

Dayton-Goose Creek R.R. v. *United States*, 263 U.S. 456.

New England Divisions Case, 261 U.S. 184.

Colorado v. *United States*, 271 U.S. 153.

Louisville & Nashville R.R. v. *Mottley*, 219 U.S. 467.

Railroad Comm. of Texas v. *Eastern Texas R.R.*, 258 U.S. 204.

Fifteenth: Your petitioner makes a part of this petition the reported decisions herein referred to and submits as an exhibit herewith a certified copy of the record of the trial of said case and of the opinion of the Supreme Judicial Court and a brief in support of this petition.

Wherefore your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this

Honorable Court, directed to the Honorable the Judges of the Superior Court in and for the County of Suffolk and Commonwealth of Massachusetts, requiring said Superior Court to certify and send to this Honorable Court on a day certain to be therein designated a transcript of the record and of the proceedings (or such parts thereof as counsel may stipulate may be useful in this Court) in said Superior Court in the matter entitled therein *Boston & Albany Railroad Company, Assignor for the Benefit of the New York Central Railroad Company*, v. *Central New England Railway Company*, No. 140,676, to the end that said matter may be reviewed and determined by this Honorable Court as provided by law, and that your petitioner may have such other and further relief or remedy and processes in the premises as to this Honorable Court may seem meet.

CENTRAL NEW ENGLAND RAILWAY COMPANY,
By JOHN L. HALL,
MARCIEN JENCKES,
Counsel.

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, ss.

I, John L. Hall, being duly sworn, say that I am one of counsel for Central New England Railway Company, the petitioner; that I have read the foregoing petition and am familiar with the matters therein set forth; and that the allegations thereof are true as I verily believe.

JOHN L. HALL.

Subscribed and sworn to before me this 27th day of October, 1928.

RICHARD WAIT,
Notary Public.

My commission expires April 11, 1935.

Supreme Court of the United States.

OCTOBER TERM, 1928.

No.

CENTRAL NEW ENGLAND RAILWAY COMPANY,
PETITIONER.

BRIEF FOR THE PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

This is a petition for a writ of certiorari to review the proceedings and judgment of the Superior Court of Massachusetts, exceptions to which by the petitioner were dismissed by the Supreme Judicial Court of the Commonwealth. The judgment was rendered against the petitioner for breach of contract. The federal questions presented are raised by the certificate and order of the Interstate Commerce Commission, which the petitioner relied on as a defense to the action brought.

The suit was brought by the New York Central Railroad Company for breach of a contract (Exhibit 3) dated October 25, 1899. This contract was executed as a result of a previous agreement, dated May 9, 1898 (Exhibit 28), between The Boston & Albany Railroad Company, the Philadelphia, Reading & New England Railroad Company, its reorganization committee, and The Hartford & Connecticut Western Railroad Company. This earlier agreement contemplated the organization of your petitioner and the construction of a branch line to connect with the lines of The Boston & Albany upon the location and construction of

which your petitioner and The Boston & Albany Railroad Company were to make the contract sued on. The branch line was to be constructed from the south through Feeding Hills, Connecticut, to a point of connection on The Boston & Albany known as Agawam Junction, a distance of four miles from the City of Springfield. The petitioner was to run its trains into Springfield over the tracks of The Boston & Albany under the license provided for by the contract sued on. The branch line was to be the only physical connection between the rails of the petitioner and those of The Boston & Albany. The only way that the petitioner could use The Boston & Albany tracks covered by the contract was by coming from the south through Feeding Hills over this new branch line.

The petitioner received by the contract no right to run any trains over the line of The Boston & Albany between the connection point and Springfield. There were no stations on the Central New England between Feeding Hills and Springfield. The petitioner's only right was to pass over with its trains about four miles of Boston & Albany tracks. Operation by the petitioner was therefore *entirely dependent* upon and ancillary to the operation of its trains from the south through Feeding Hills to the point of connection.

Within a month after the execution of the second contract (Exhibit 3) The Boston & Albany Railroad had been leased, by Exhibit 1, to the corporate predecessor of the New York Central Railroad Company.

The branch line was completed in 1902 and was operated for approximately nineteen years, until revenue and expenses for the operation from Feeding Hills into Springfield showed a loss for the year 1920 alone of $38,832.58 (Exhibit 22).

The Interstate Commerce Commission then issued an order authorizing the abandonment by the petitioner of its operation over this branch line, and the petitioner, on De-

cember 15, 1921, ceased operation in accordance with the order of the Commission. It was the contention of the plaintiff at the trial that, despite the petitioner's cessation of operation, the plaintiff should receive for the subsequent years the $15,000 specified in the contract. This contention was based on the ground that the cost to the plaintiff of furnishing the facilities provided for by the contract was nothing. The petitioner has been held liable to pay to that plaintiff a sum equivalent to over $10,000 a year for the named period. This was so even though the Interstate Commerce Commission had issued its order authorizing the abandonment of the branch line, the use of which was essential to the passing of Central New England trains over the tracks of The Boston & Albany.

The physical situation at Agawam Junction is well illustrated by maps contained in Exhibit 32 and by Exhibits 23, 24, 25 and 35. It is about four miles from Agawam Junction to Springfield.

The layout at Springfield is well illustrated by Exhibits 22, 24 and 29. It is described in the record submitted herewith.

The New York Central Railroad Company was the original plaintiff, basing its rights upon two assignments:

1. That of The Boston & Albany Railroad Company to the New York Central & Hudson River Railroad Company, dated November 15, 1899, contained in the lease of The Boston & Albany Railroad to the New York Company, and—

2. That of the New York Central & Hudson River Railroad Company to it contained in the consolidation agreement, Exhibit 2.

By amendment allowed June 19, 1928, after the rescript from the Supreme Judicial Court, The Boston & Albany Railroad Company, assignor for the benefit of the New York Central Railroad Company, became the plaintiff.

The contract on which the suit was brought contains a single whereas clause referring to Exhibit 28 and the construction of the line to connect with The Boston & Albany. The claim against your petitioner is for breach of the obligation contained in paragraph 1 of the contract, Exhibit 3. This paragraph provides generally that from and after the opening of the branch line for the passage of regular trains until the 30th day of August, 1940, The Boston & Albany Railroad Company was to "license and permit, subject to the regulation and control" by itself of the train movement, the petitioner and its successors "to pass with trains and locomotives over the line of the Albany Company between the point of connection west of the Connecticut River and the yard and engine houses at West Springfield in each direction, and farther for passenger trains across the bridge over the Connecticut River and into the Union Station at Springfield, with the right to use in connection with such trains all water stations and other facilities necessary for the accommodation of such trains and the traffic to be transported by them," the petitioner "paying to the plaintiff therefor fifteen thousand dollars ($15,000) per annum in equal quarterly payments on the first days of January, April, July and October of each year, the first payment to be made upon the first quarterly period next succeeding the opening of said branch line for the passage of regular trains."

The first paragraph also provided for proportionately increased payments if the number of trains exceeded a specified number and for payment to be made by your petitioner if it used the Albany's water stations or engine stalls.

The second paragraph of the body of the agreement provided rates for the transfer of freight cars.

The third paragraph required the Albany Company to sell tickets, handle baggage and take care of passenger

trains and transfer through passenger cars to connecting lines.

The fourth paragraph provided for your petitioner to build and maintain an interlocking tower at the junction of its road and the Albany.

The fifth paragraph dealt with the ascertainment and apportionment of responsibility in case of accident or loss.

The sixth paragraph provided that your petitioner should make payments required by the contract in accordance with the terms thereof.

The seventh and last paragraph dealt with the transfer of the contract rights and the effect of bankruptcy, etc.

Operation by the petitioner over the branch line and into Springfield began on September 15, 1902, and continued with a gradually decreasing number of trains operated until December 15, 1921. Payments were made by your petitioner for all charges billed against it under the contract up to and including December 15, 1921. The suit brought, therefore, related solely to the future.

For the five years ending December 31, 1920, the business of the petitioner resulted in a total loss of $4,226,356.95, and the revenue and expenses for the operation from Feeding Hills into Springfield showed a total loss for 1920 from operating the branch line of $38,832.58 (Exhibit 32).

In May, 1921, the petitioner filed under section 1 of the Interstate Commerce Act as amended by the Transportation Act of 1920, 41 Stats. at Large 474, an application with the Interstate Commerce Commission for a certificate that the present and future public convenience and necessity permit the abandonment of its line between Feeding Hills and Agawam Junction (Exhibit 32). The required statutory notice of the petition and proceeding was given, and in August the answers to a questionnaire giving the full history of the petitioner's line and its operation were filed (Exhibit 2). In September the Interstate Commerce

Commission issued its certificate and order authorizing the abandonment (Exhibit A, Exhibit 32).

By letter dated November 9, 1921 (Exhibit 7, Record, p. 7), the plaintiff was informed that the defendant, by virtue of Exhibit A, proposed to discontinue operation into Springfield and to cease to use the privileges of Exhibit 3. On December 14, 1921, the defendant operated its last train out of Springfield. The petitioner's line from Feeding Hills to Agawam Junction was abandoned for service. The physical connection at Agawam Junction was severed. It became legally and physically impossible for the petitioner to operate its trains over the tracks of The Boston & Albany into Springfield.

The action to recover damages at the rate of $15,000 a year for more than eighteen years was begun in April, 1922. At the trial the petitioner claimed that the plaintiff had suffered no damages by reason of the cessation of operation because the cost to the original plaintiff, if the petitioner operated the full contract allowance of trains, would be as much or more than $15,000 a year. The original plaintiff, on the other hand, contended that it should be allowed to recover the full $15,000 a year without deduction because the petitioner had entirely repudiated the contract and the cost to the plaintiff of furnishing the facilities was nothing. Considerable testimony from eye-witnesses and experts was produced by both sides, on the basis of which the jury rendered a verdict of $169,012.72, which represents about $10,500 per annum from December 15, 1921, to August 30, 1940, discounted at 6%.

The petitioner by answer and argument in both the Superior and Supreme Judicial Courts of Massachusetts contended that the Interstate Commerce Act and the order of the Commission thereunder were a defense to the action. This claim of right or immunity set up under a federal statute has been denied to the petitioner in a decision by the highest court of the state in which a decision could

be had. The federal question thus raised is the principal question sought to be reviewed in this Court.

The further question of jurisdiction is also raised because both at the beginning and at the end of the trial the petitioner challenged the court's jurisdiction of the subject-matter of the case.

Statutes Involved in the Case.

Interstate Commerce Act, as amended by the Transportation Act of February 28, 1920, 41 Stat. at Large 456, 477, sec. 1, pars. 18 to 20, inclusive:

> "(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment.
>
> "(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon

receipt of any application for such certificate the commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints of the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

"(20) The commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly

authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both."

Section 207 of the Judicial Code, Act of March 3, 1911, c. 231, 36 Stat. 1148, Act of June 18, 1910, c. 309, sec. 1; 36 Stat. 539, being United States Comp. Stat. 1916, sec. 993:

"The Commerce Court shall have the jurisdiction possessed by circuit courts of the United States and the judges thereof immediately prior to June eighteenth, nineteen hundred and ten, over all cases of the following kinds:

"First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

"Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

"Third. Such cases as by section three of the Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

"Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled 'An Act to regulate commerce', approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

"Nothing contained in this chapter shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the Commerce Court.

"The jurisdiction of the Commerce Court over cases of the foregoing classes shall be exclusive; but this chapter shall not affect the jurisdiction possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes."

Section 208 of the Judicial Code, Act of March 3, 1911, 36 Stat. 1148, Act of June 18, 1910, c. 309, sec. 1; 36 Stat. 539, being United States Comp. Stat. 1916, sec. 997:

"Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the Commerce Court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the Commerce Court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit."

Act of October 22, 1913, c. 32, 38 U.S. Stat. at Large 219, being United States Comp. Stat. 1916, sec. 992:

"The Commerce Court, created and established by the Act entitled 'An Act to create a Commerce Court and to amend the Act entitled 'An Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes', approved June eighteenth, nineteen hundred and ten, is abolished from and after December

thirty-first, nineteen hundred and thirteen, and the jurisdiction vested in said Commerce Court by said Act is transferred to and vested in the several district courts of the United States, and all Acts or parts of Acts in so far as they relate to the establishment of the Commerce Court are repealed. Nothing herein contained shall be deemed to affect the tenure of any of the judges now acting as circuit judges by appointment under the terms of said Act, but such judges shall continue to act under assignment, as in the said Act provided, as judges of the district courts and circuit courts of appeals; and in the event of and on the death, resignation, or removal from office of any of such judges, his office is hereby abolished and no successor to him shall be appointed."

Argument.

Outline.

1. The case is a proper one to be reviewed by this Court.
2. The judgment of the Massachusetts courts should be reversed.

   a. The Interstate Commerce Act and the certificate and order of the Commission issued thereunder necessarily protect the defendant from any liability in this action.

   b. There was no jurisdiction in the Massachusetts courts to hear the cause.

1. The Case is a Proper One to be Reviewed by This Court.

The petitioner, by claim and argument seasonably made before both Superior and Supreme Judicial Courts in Massachusetts, has contended that it should be protected from liability in this suit by the Interstate Commerce Act as amended by the Transportation Act of 1920, and the

certificate and order of the Interstate Commerce Commission issued under paragraphs 18 to 22 of section 1 of that statute. The question depends upon the scope and effect to be given to the above-mentioned paragraphs of the amended Interstate Commerce Act. It is a federal question of considerable substance and importance which has not been decided by this Court.

The claim of a federal right is based upon the paramount power of Congress to legislate concerning interstate commerce even to the extent of cutting across or abrogating private contracts. The Supreme Judicial Court of Massachusetts, on conclusive authority, admitted this power and assumed that Congress, by the Transportation Act, authorized the Commission to sanction the abandonment by an interstate carrier of a contractual obligation, such as existed in the case before it, with impunity (see eighth paragraph of Supreme Court opinion).

The Supreme Judicial Court of Massachusetts, however, denied the petitioner's contention on the ground that the Interstate Commerce Commission did not *intend* to deprive The Boston & Albany Railroad Company, or its successor, of its rights under the agreement with the petitioner (see ninth paragraph of Supreme Court opinion).

This reasoning, it is submitted, wholly misconstrues the situation, because the paragraphs 18 to 22 of section 1 of the Interstate Commerce Act do not expressly give to the Commission any particular power over obligations. Under those paragraphs the Commission deals with abandonment of lines of railroad, so that the *intention* of the Commission as to any particular obligation is immaterial. The effect on private contracts of the Commission's action is by force of the intent of Congress as shown by the legislation, and not by force of the Commission's primary intention to affect the contract.

Congress, by the paragraphs 18 to 22, delegated to the Commission the duty of determining when the public con-

venience and necessity permitted or required certain things, and of issuing a certificate to that effect. This delegation to the Commission was of a special nature. The certificate and order of the Commission may state the time or place of efficacy, but the result on private contracts is the result of the intent of Congress as set out in the statute. The legal effect of action taken by the Commission ensues, not by force of the Commission's order, but by force of the Act of Congress.

It is submitted, therefore, that the Supreme Judicial Court of Massachusetts has misinterpreted the Interstate Commerce Act as amended. It has decided a federal question of substance on an improper and inadequate interpretation of a federal statute, and, as shown in the second section of this brief, the result reached is not in accord with applicable decisions of this Court.

It is of no moment in this petition that the federal right was not denied in terms by the state courts, for it is clear that the state courts necessarily denied the federal right in the judgment rendered, and that is a sufficient denial for this Court to take jurisdiction by writ of certiorari. (Sec. 237 (*b*) of the Judicial Code as amended; U.S. Code Ann. title 28, § 344 (*b*). *St. Louis Iron Mt. & Southern* v. *Starbird*, 243 U.S. 592. See also *Mellen* v. *O'Neil*, 275 U.S. 212.)

The case does not draw in question the constitutional validity of the federal statutes involved, so that it is not a case in which an appeal could be allowed.

It is therefore a proper case for review in this Court on a writ of certiorari, because claims of right or privilege made under federal statutes especially set up and claimed by your petitioner have been effectively denied to your petitioner by the highest court of the Commonwealth of Massachusetts in which a decision could be had.

2. The Judgment of the Massachusetts Courts should be Reversed.

a. The amended Interstate Commerce Act and the certificate and order of the Commission issued thereunder protect the defendant from any liability in this action.

The completeness of the constitutional grant to Congress of power over interstate commerce and contracts involving it has never been questioned. It may even be used to prohibit. (*United States* v. *The William*, 28 Fed. Cases, 614, where embargo laws of 1807 and 1808 were upheld. *The Lottery Cases*, 188 U.S. 121.) Certainly any contract dealing with interstate commerce is subject to an infirmity that Congress may legislate so as to alter that contract. Such legislation is paramount in its field and cuts across public or private arrangements of any kind.

Addyston Pipe & Steel Co. v. *United States*, 176 U.S. 211.

Louisville & Nashville R.R. v. *Mottley*, 219 U.S. 467.

Union Bridge Co. v. *United States*, 204 U.S. 364, 399, 400.

Minnesota Rate Cases, 230 U.S. 352.

New York v. *United States*, 257 U.S. 591, 601.

New England Divisions Case, 261 U.S. 184.

Dayton Goose Creek R.R. v. *United States*, 263 U.S. 456.

The Transportation Act of 1920 (41 U.S. Stats. 456), amending the Interstate Commerce Act, was an exercise of this Congressional power which introduced into federal legislation a new railroad policy of developing and ensuring an adequate national transportation system.

New England Divisions Case, 261 U.S. 185, at 189.

In the case at bar the petitioner was given a certificate and order of the Interstate Commerce Commission specifically authorizing the abandonment of a line of railroad. No one ever questioned but that the abandonment of that railroad necessarily involved the cessation of the petitioner's operation into Springfield and the use of the tracks covered by the contract sued on. The contract gave the petitioner no right to operation independent from service from the south over the abandoned line. The contract was premised upon the operation of that line. The whole situation was before the Commission. After the abandonment it was *physically impossible* for the petitioner to operate into Springfield under the contract. The breach of contract for which it is sought to hold the petitioner liable was necessarily incident to the abandonment authorized.

The certificate and order of the Interstate Commerce Commission upon which the petitioner relied in ceasing its operation into Springfield, Massachusetts, were issued under paragraphs 18 to 22 of section 1 of the amended Interstate Commerce Act. In a proceeding under these sections the Commission acts in the interests of interstate operations. Congress delegated to the Commission the duty of determining when public convenience and necessity permitted certain things and of issuing or denying a certificate to that effect. The Commission exercises the delegated judgment of Congress as to whether or not there is occasion for legislative action. The delegation is of a limited and special nature. It is of legislative, not judicial, power. The Commission's action may state the time or place of efficacy, but the result on private or public obligations is the result of the Act of Congress. The Commission's delegated judgment being exercised and action taken by issuance of an order, the effect of the order is to be determined by the provisions of the federal legislation, not with reference to the Commission's specific intent, nor

according to a court's view of the benefit or benefits of the situation.

Colorado v. *United States*, 271 U.S. 153, at 167.
Houston & Texas Ry. v. *United States*, 234 U.S. 342.
Union Bridge Co. v. *United States*, 204 U.S. 364.

The Commission, by section 20, has the power to attach conditions to orders issued on applications for certificates and orders of abandonment. Such conditions may properly take care of persons, private or public, who object to the granting of an order.

See *Control of Hereford Ry.*, 99 I.C.C. 7.

This power to impose conditions and the legislative nature of the Commission's order both show that the place for any objecting party to be heard is before the Commission or in the federal courts, as provided by sections 207 and 208 of the Judicial Code (see sec. (*b*) of this part of this brief). The issuance of an unconditional order by the Commission leaves parties affected no remedy but to seek to attack the order in a proper forum with jurisdiction.

The legislative nature of the Commission's order also shows the fallacy of the action of the Supreme Judicial Court of Massachusetts (see tenth paragraph of Supreme Court opinion) in attempting to support its conclusion as to the Commission's intention by relying on the facts that the plaintiff had not been made a party to the proceedings before the Commission and that the case was submitted to the Commission "without a formal hearing." Despite the lack of any requirement of notice to parties affected by legislation, there were provisions in the Transportation Act as to constructive notice by publication. *The petitioner fully complied with all of the statutory provisions as to notice.* There was therefore no flaw in the proceedings before the Commission.

And, further, the Supreme Judicial Court of Massachusetts erred in suggesting (see tenth to twelfth paragraphs of the Supreme Court opinion) that the Interstate Commerce Commission did not intend to rule that the $15,000 annual payment was an operating charge, because—

(*a*) The accounting nature of the $15,000 contract charge is entirely immaterial to the determination of the principal question as to the legal effect, on the contract in suit, of the Transportation Act and action thereunder.

(*b*) The Interstate Commerce Commission has determined that the payment is an operating, not a fixed, charge.

(*c*) Whatever name may be given to the item does not affect the prime circumstances that the wherewithal to pay it comes from the operating revenues of the petitioner, and the continuation of those payments or the payment of the judgment rendered against the petitioner would be a certain drain of that amount upon the petitioner's resources and just the sort of a burden on its interstate operations as Congress intended to avoid.

Considerations as to the advisability of the Commission's action are quite immaterial in determining the legal effect of the Commission's order. The Commission has no right to consider the expenditures of the applicant except as one factor in determining the underlying question, namely, whether the operation of the branch was a burden on the interstate operations of the petitioner. (*Application of Chicago, Rock Island & Pacific*, 131 I.C.C. 421.) Any consideration by the court of the amount or nature of losses involved in the proposed abandonment is therefore immaterial. Such matter is only for the Commission in determining whether or not a certificate of public convenience and necessity should issue. It is not for the court to apply in determining the legal effect of the statute and the Commission's order.

As used in the above-mentioned paragraphs of the opinion of the Supreme Judicial Court, the words "a fixed charge" refer to a charge which is to be paid for the use

of a capital asset as distinguished from a purely operating charge. The Interstate Commerce Commission, the supreme authority in the matter of railroad accounting (*Interstate Commerce Commission* v. *Goodrich Transit Company*, 224 U.S. 194), has repeatedly ruled that contracts such as the one involved in the case at bar do not give to the licensee any rights which can be valued under section 19A of the Interstate Commerce Act.

> *Texas & Midland Railroad*, 75 I.C.C. 1, at 25.
> *Kansas City Southern Railroad*, 75 I.C.C. 223, at 235 and 248.
> *Danville & Western*, 84 I.C.C. 227, at 230.
> *Augusta Union Station*, 97 I.C.C. 586, at 590.

It follows from such rulings that the Interstate Commerce Commission has adjudicated that such charges as the $15,000 payment involved in the case at bar are not fixed charges. It results, therefore, that any payment made for such rights or facilities is an operating, as distinguished from a fixed, charge.

This result is confirmed by an examination of the orders of the Interstate Commerce Commission as to the calculation under section 15A of the Interstate Commerce Act of net railway operating income. The orders of the Commission dealing with this problem are on file under the following dates:

Period	Date of Order
For the four months from the taking effect of the Act to December 31, 1920	Jan. 16, 1922
For the year 1921	March 16, 1922
For the year 1922	March 21, 1923
For the year 1923	March 17, 1924
For the year 1924	Jan. 21, 1925
For the year 1925	Jan. 27, 1926
For the year 1926	Feb. 4, 1927
For the year 1927	Jan. 14, 1928

Attached to the orders for the years 1923 through 1927, inclusive, are forms for use by the reporting carriers. Exhibit C of these forms, for the years 1924 to 1927, inclusive, shows in detail what items are to be deducted before the calculation of net railway operating income or deficit. The orders for the years prior to 1924 show that the rules and principles applied and the calculations made are the same as those made for the years 1924 and after, but that in the latter case more detail was required by the Commission. Included among these deductions listed on the form Exhibit C are the following account titles: "Maintaining Joint Tracks, Yard and other Facilities—Dr.," the tenth item from the bottom of page 7 of the 1928 order; "Operating joint Tracks and Facilities, Dr.," the tenth item from the top of page 8 of the 1928 order; "Joint Facility Rents (Account 541)," the third item from the end of Exhibit C on page 8 of the 1928 order.

These titles are the titles of accounts prescribed by the Interstate Commerce Commission for use in the uniform system of accounts by the railroads of the country. The accounts are all explained in two published orders of the Commission, dated May 19, 1914, and respectively entitled: "The Classification of Operating Revenues and Operating expenses of steam roads," and "The Classification of Income, Profit and Loss and General Balance Sheet Accounts."

For each of the account titles set out above it will be noticed from these orders of the Commission that there are two account numbers, one the debit account to be used by the paying carrier and one the credit account.

Examination of these orders of the Commission and the description and definition of the accounts therein contained shows that the above-mentioned accounts are the ones to which would be respectively charged and credited by the carriers involved payments made on account of the service covered by the $15,000 annual payment.

The only question as to the use of these accounts would be as to the distribution of the total amount paid between the various accounts. This is practically immaterial, because all the accounts mentioned appear as deductions before the calculation of "net railway operating income." They all represent operating rather than fixed charges.

However, if it is important, the apportionment made by the payee assignee in the case at bar in accordance with special instruction 9 of "Classifications of Operating Revenues and Operating Expenses for Steam Roads" is shown on Exhibit 5 by account numbers and amounts to be as follows:

Credit Account listed by N. Y. Central (Exh. 5)	Account Title	Amount Credited	Per Cent	Debit Acc't No.
279	Maintaining joint tracks, etc.	750.00	20	278
413	Operating joint tracks, etc.	187.50	5	412
508	Joint facility rents	2812.50	75	541

It seems from the foregoing that the $15,000 payments were and should be treated as operating expenses of the petitioner, Central New England Railway Company.

It is therefore submitted that the Supreme Judicial Court of Massachusetts was in error in basing its conclusion as to the inefficacy of the order of the Interstate Commerce Commission upon the theory that the Commission did not intend to adjudicate the $15,000 annual payment to be an operating charge (see tenth paragraph of Supreme Court opinion). For this reason also the judgment herein should be reviewed.

The extent of the scope of the protection given to the petitioner by the certificate and order of the Interstate Commerce Commission is the basic question in the case. It is our contention that the decisions of this Court and the purpose and intent of the legislation make it clear that

a certificate and order granted by the Interstate Commerce Commission to a carrier are sufficient to protect from liability the carrier acting under them in an economical and efficient execution of that order. Congress intended the legislation to relieve burdens from interstate operations of carriers. The legislation will be rendered entirely ineffective unless the certificate and order fully protect the carrier acting under them from liability in suits necessarily following upon an economical and efficient execution of the order.

Colorado v. *United States*, 271 U.S. 153.

St. Paul & Tacoma Lumber Co. v. *Northern Pacific Ry. Co.*, 296 Fed. 749; 4 F. (2d) 359; 269 U.S. 535.

Hawkeye Portland Cement Co. v. *Chicago, R.I. & P. R.R.*, 198 Iowa, 1250; 201 N.W. 16 (Iowa, 1924).

These three authorities, in all of which permissive orders of commissions were held protection in suits on contracts, show clearly the immateriality of the Commission's intention as to any particular obligation in determining the legal effect of the statute and action thereunder, because in none of them is there any suggestion in the Commission's certificate or by the court as to the specific intention of the Commission with respect to the particular obligation involved.

Further, these three authorities hold clearly that even permissive orders of the Interstate Commerce Commission issued on the application of the carrier authorized are a complete protection to the carrier authorized in the carrying out of the acts authorized. The cases, particularly *Colorado* v. *United States*, 271 U.S. 153, establish the law that a carrier acting on an authorization of the Interstate Commerce Commission is immune from any liability to parties, public or private, such as that sought to be enforced by the case at bar, which would not have resulted but for

the action taken in pursuance of the order of the Commission.

In addition to the above authorities it is submitted that other numerous decisions of this Court as to various other provisions of the Transportation Act emphasize the broad scope of that legislation.

Railroad Commission v. *Chicago, B. & Q. R.R.*, 257 U.S. 563.

New York v. *United States*, 257 U.S. 592.

New England Divisions Case, 261 U.S. 184.

Dayton Goose Creek R.R. v. *United States*, 263 U.S. 456.

Railroad Comm. v. *Southern Pac. Co.*, 264 U.S. 331.

United States v. *Hubbard*, 266 U.S. 474.

Texas & Pac. R. Co. v. *Gulf, C. & S.F. Co.*, 270 U.S. 266.

Colorado v. *United States*, 271 U.S. 153.

Alabama & Vicksburg Ry. Co. v. *Jackson & Eastern Ry. Co.*, 271 U.S. 244.

These decisions affirm not only the paramount power of Congress in the field, but also the far-reaching extent of what Congress did. It is submitted that they show that this Court has established a body of law which requires that the petitioner be protected from liability for acts necessarily resulting from action ordered authorized by the Interstate Commerce Commission.

The purpose and intent of Congress require that such construction be given to the legislation involved, and that the petitioner be protected:

(a) Section 20 provides that, without securing other approval than the Commission's certificate, the carrier may proceed with the authorized abandonment. It would be a most impotent and ineffective attempt to relieve the interstate operations of the petitioner from a burden if the

petitioner relies on the order and ceases operation only to be faced with a liability for damages. By Act of Congress, as distinguished from the Commission, the defendant is given a defense to this action. To be of any real value to the defendant in interstate commerce the order must have such scope that the petitioner can fully and freely rely on it and be protected from liability in a suit such as the case at bar, which would not have resulted but for the action taken in pursuance of the Commission's order.

(*b*) If the carrier which acts on a certificate of the Interstate Commerce Commission is not free from a civil liability necessarily consequent upon the authorized action, it will mean that in each case the carrier for itself would have to determine which course of action would be cheaper. With such a result the "fostering guardianship and control" of the Commission ceases to have any force, the oft-repeated purpose to develop a national transportation system is thwarted in violation of the Act of Congress, and the judgment of other persons or courts substituted for the judgment of the Commission.

(*c*) Particularly is this true when it is realized that the petitioner had no alternative but to act under the order of the Commission and abandon what it cannot "efficiently and economically" operate. Failure to check the drain of its resources as soon as authorized by the Commission would be a violation of the mandate of section 15 *a* (2) and (3) of the Interstate Commerce Act for "honest, efficient and economical management." By so doing the petitioner not only jeopardizes its own rates (see section 15 *a*) and allows an unreasonable burden on its interstate operations to continue, but also affects the excess income held for the benefit of the transportation system.

It is clear that the permissive nature of the Commission's order is no flaw in the petitioner's defense, because most of the cases cited above were cases in which the orders of the Commission were permissive in nature. In each

case, however, the private contract involved was held modified to such extent as was sufficient to protect fully the efficient execution by the carrier authorized of the Commission's order.

It is also clear that the petitioner's own activity as applicant in bringing about the legislative order whose protection it now seeks is immaterial, because Congress and the Commission represent the public and interstate commerce as a whole.

Commissioners v. *Young*, 59 Fed. 96.
Brick Presbyterian Church v. *Mayor of New York*, 5 Cow. (N.Y.) 538.
Dunham v. *New Britain*, 55 Conn. 378.
Scovill v. *McMahon*, 62 Conn. 378.

The purpose and interpretation of the Transportation Act are such that it follows as matter of law, when the Commission authorizes an act, that the carrier authorized shall be protected from liability in doing the act authorized. The obligation of the petitioner under the contract sued upon is not unlike an obligation that might exist had the petitioner agreed with some shipper to maintain for a definite period a side-track and after the abandonment covered by the order of the Interstate Commerce Commission it could no longer furnish side-track facilities. Clearly, in that case, the certificate and order of the Commission would protect the carrier authorized from liability to the shipper.

It follows that the petitioner should be protected from liability on contracts the breach of which is necessarily and directly involved in the performance of the act ordered authorized by the Commission.

And further it is submitted that, in a case of a carrier's operation of a branch line under such an agreement as existed in the case at bar, it might very well be that the carrier by continuing operation of the branch would only

lose, including payment of a $15,000 contract charge, $5000. Under such circumstances, if the Commission issued a certificate and order authorizing abandonment, and the carrier relied on the order and ceased operation only to face a liability for damages at the full contract rate of $15,000 a year, it would appear clearly that the Commission's certificate and order had been absolutely ineffective in protecting from a burden the interstate operations of the carrier authorized. This result is contrary to the purpose and intent of the legislation as construed by this Court because the statute and the certificate and order issued thereunder must indeed have some purpose. The same principle applies where the carrier happens, as in the case at bar, to be losing more than the full contract charge by continuance of operation. If the payments at the rate of $15,000 a year are to continue, the certificate of abandonment has been no relief to the interstate operations of the petitioner, and the very purpose of Congressional action is defeated. It results, therefore, that a certificate and order of authorization by the Commission should protect the carrier authorized from liability in lawsuits necessarily and directly resulting from the performance of the act authorized.

See *Railroad Comm. of Texas* v. *Eastern Texas R.R.*, 258 U.S. 204; 264 U.S. 79.

In the first opinion in that case, this Court held that a certificate and order identical in form with the one in the case at bar were not authority protecting the applicant where purely intrastate commerce was involved. In that opinion it was said, and it is submitted that the language is exactly applicable to the case at bar:

> "The road lies entirely within a single state . . . and is not a part of another line. Its continued operation solely in intrastate commerce cannot be of more than local concern. Interstate and foreign commerce

will not be burdened or affected by any shortage in the earnings, nor will any carrier in such commerce have to bear or make good the shortage. *It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line and thereby affect its utility or service as an artery of interstate and foreign commerce.*" (Italics ours.)

We therefore submit that the petitioner should be protected in this action for damages because—

1. Private contracts dealing with interstate commerce are subject to an infirmity that Congress may act thereon.

2. Congress has acted with broad scope and purpose and passed the Transportation Act of 1920.

3. Authority and reason show that the legislative action of Congress and the Interstate Commerce Commission are sufficient in scope to protect fully the petitioner from liability in suits such as the one at bar, resulting from an economical and efficient execution of the order of the Commission.

b. There was no jurisdiction in the Massachusetts courts to hear the cause.

Cases brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission can be brought only in the Federal District Court. The jurisdiction of the District Court in such cases is exclusive. This results from the fact that this jurisdiction, vested in the Commerce Court by section 207 of the Judicial Code of March 3, 1911, was transferred by Act of October 22, 1913, to the District Courts.

Sec. 207, Act of March 3, 1911, c. 231; 36 U.S. Stat. at Large 1087.

Act of Oct. 22, 1913, c. 32; 38 U.S. Stat. at Large 219.

See also—

United States Comp. Stats. 1916, secs. 992, 993, 997, 998.

The motion to dismiss is not affected by the fact that it may not appear on the face of the pleadings that the suit is essentially one to annul or suspend in whole or in part an order of the Commission. When by filing of the motion or during the trial it does develop that the suit is essentially for the above purpose, the motion to dismiss should be allowed for want of the Court's jurisdiction over the subject-matter or of the United States.

Lambert Run Coal Co. v. *Baltimore & Ohio R.R. Co.*, 258 U.S. 377.

It is not necessary that the suit expressly seek to annul or set aside an order of the Commission. It is enough to bring the action within the exclusive jurisdiction of the Federal District Court that it is sought to prevent the petitioner from doing what the order authorizes, because that is equivalent to asking that the order be adjudged invalid.

Venner v. *Michigan Central R.R. Co.*, 270 U.S. 127.

Illinois Central R.R. Co. v. *State P.U. Comm.*, 245 U.S. 493, 504, 505.

North Dakota v. *Chicago & Northwestern R.R.*, 257 U.S. 485.

State of Louisiana v. *Morgan's Louisiana E.T.R. & S.S. Co.*, 18 F. (2d) 645.

The case at bar is on all fours with the above four cases except that they were bills in equity to enjoin or nullify orders of the Commission and the instant case is a suit at law whose inevitable result must be to nullify and suspend at least in part an order of the Commission by putting

upon the defendant one of the very burdens which it raised before the Commission on petition for its order.

The substance of the plaintiff's argument in the case at bar rests on the claim that the Commission's order has no application to the agreement sued on. The attempt is to limit the application of the order, suspend its operation as against the agreement sued on, and annul its effect to a certain extent.

The facts and figures of the situation were before the Commission in the proceedings for the order authorizing abandonment. Upon the whole question the Commission acted, and the plaintiff cannot in a state court suspend or annul that action. The tribunal for determination of such matters is prescribed by the United States statutes referred to above. The plaintiff would, in the case at bar, have the state court determine the effect and interpretation of action taken under a federal statute on interstate commerce, a matter confided by the United States Constitution to Congress and on which Congress has fully acted. It is just that sort of case that is properly brought only in the Federal District Court.

> *North Dakota* v. *Chicago & Northwestern R.R.*, 257 U.S. 485, *supra*.
>
> *Lambert Run Coal Co.* v. *Baltimore & Ohio R.R.*, 258 U.S. 377, *supra*.

The permissive nature of the order makes no difference so far as this question is concerned.

> *Chicago Junction Case*, 264 U.S. 258, and cases cited.

Either this certificate and order of the Interstate Commerce Commission is a complete defense to this action for damages or else the action becomes a suit to annul in part the effect of the order and the purpose of its issuance.

The defendant's amended motion to dismiss should therefore have been allowed because the action brought must inevitably be a suit which would directly or indirectly annul or suspend, at least in part, the order of the Interstate Commerce Commission entered in Finance Docket 1479.

Conclusion.

The petitioner therefore contends that a writ of certiorari should issue to the Superior Court of Massachusetts in order that the decision by the courts of that Commonwealth may be examined by this Court. We contend that the writ should issue because the Massachusetts courts in the case at bar have given opinions on matters of federal statutes and law, particularly under the amended Interstate Commerce Act, which are at direct variance with the opinion of the Interstate Commerce Commission and not in accord with the applicable decisions of this Court.

The Interstate Commerce Commission has issued a legislative order which specifically authorized the petitioner to abandon a line of railroad. The petitioner, in pursuance of the mandates of the Transportation Act (see section 15 *a* (2) and (3)), abandoned the line. No one ever questioned but that the abandonment of the line involved the petitioner's ceasing operation into Springfield and the use of the tracks covered by the contract sued on. After the abandonment it was physically and legally impossible for the petitioner to operate under the contract. The petitioner should therefore, as matter of law, by force of the Act of Congress, be protected from liability on the contract in a suit, such as the one at bar, brought as a direct result of action taken under and by virtue of the Commission's order.

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